

CASE NO. 15-16440

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MANUEL de JESUS ORTEGA MELENDRES, *et al.*, Plaintiffs

v.

JOSEPH M. ARPAIO, Sheriff of Maricopa County,
Arizona; *et al.*, Defendants

and

DENNIS L. MONTGOMERY, Putative Intervenor

From the United States District Court
For the District of Arizona
The Honorable G. Murray Snow, Presiding
Case No. CV-07-2513

AMENDED EMERGENCY MOTION FOR STAY ON APPEAL

ORAL ARGUMENT REQUESTED

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CIRCUIT RULE 27-3 CERTIFICATE

As the moving party, Putative Intervenor Dennis Montgomery, by counsel, certifies that to avoid irreparable harm Montgomery must obtain relief in less than 21 days, including because his property has already been released to a third party and he is continually suffering new harm as the underlying case progresses, and because evidentiary hearings are scheduled to resume in September 2015. *See*, Minute Order, July 20, 2015 (Doc. No. 1179). These matters need to be resolved before the case progresses with plenty of time to prepare.

- (i) The telephone numbers, e-mail addresses, and office addresses of the attorneys for the parties;

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(ii) Facts showing the existence and nature of the claimed emergency; and

A dramatic transformation of the original case occurred in April 2015, which is now targeting Dennis Montgomery, Putative Intervenor, although he is not a party, has never been served, and should have nothing to do with the litigation. As a result, Montgomery's rights have been violated and are continuing to be violated

on a weekly and even daily basis in the case below. The underlying case was concluded by final judgment on October 2, 2013. (Docs. No. 606, 670.)

As one important example, on July 20, 2015, the presiding judge, the Honorable G. Murray Snow of the U.S. District Court for the District of Arizona (“District Court”) granted a civil motion by the U.S. Department of Justice (“DoJ”) to turn over to the U.S. Government the very same documents, data, and things that the U.S. District Court for the District of Nevada had already ordered DoJ to return to Montgomery once before. See, Transcript, July 20, 2015, Status Conference, *Melendres v. Arpaio*, Page 42-53, primarily Page 53 (*Emphases added*); Order, July 24, 2015. (Docket No. 1190.) Montgomery’s intellectual property, medical records protected by the Health Insurance Portability and Accountability Act, proprietary trade secrets, work product, and personal property have been taken.

The U.S. District Court for the District of Nevada has already ruled that (1) the data, documents, intellectual property, tangible objects, and personal property at issue in this case belong to Dennis Montgomery, (2) none of it is classified, (3) the U.S. Government was required to return it all to Montgomery, and (4) the U.S. Government had deceived that court. See *Dennis Montgomery and the Montgomery Family Trust v. eTrepid Technologies, LLC, Warren Trepp and the U.S. Department of Defense*, Case Nos. 3:06-CV-00056-PMP-VPC and 3:06-CV-00145-PMP-VPC, Order, Judge Philip M. Pro, March 19, 2007, and *In the Matter of*

the Search of: The Residence Located at 12720 Buckthorne Lane, Reno, Nevada, and Storage Units 136, 140, 141, 142 and 143, Double R Storage, 888 Madestro Drive, Reno, Nevada, Case Nos. 3:06-CV-0263-PMP-VPC and 3:06-MJ-00023-VPC, Order, Magistrate Judge Valerie P. Cooke, November 28, 2006 (“Nevada Orders”).

Judge Snow did not order seizure documents and things relevant to the *Melendres v. Arpaio* case. Judge Snow ordered that “all” documents relating to Montgomery be indiscriminately seized and distributed to Plaintiff’s counsel, non-party counsel, and to the DoJ, explicitly acknowledging they might be irrelevant.

Evidentiary hearings (Order, January 16, 2015, Page 2, Doc. No. 856) will reconvene September 22nd through 25th and September 29th through October 2nd, 2015. Minute Order, July 20, 2015 (Doc. No. 1179). Judge Snow has also scheduled regular interim hearings at which he typically issues orders, often without providing notice or due process, and often affecting Montgomery.

As a result, emergency treatment of Montgomery’s motion to stay is required.

(iii) When and how counsel for the other parties were notified and whether they have been served with the motion; or, if not notified and served, why that was not done.

Counsel for the other parties were notified via email on July 24, 2015, before 9:00 AM local Arizona time, of Dennis L. Montgomery’s intention to file

this motion for stay on an emergency basis. Counsel will be served via email as soon as the motion has been filed with this Court.

AMENDED ¹ EMERGENCY MOTION FOR STAY

I. REQUEST FOR ORAL ARGUMENT

Dennis L. Montgomery (“Montgomery”) respectfully requests oral argument on his motion, and expeditious handling of the motion and appeal.

II. INTRODUCTION

Montgomery respectfully moves this U.S. Court of Appeals for the Ninth Circuit (“Ninth Circuit”) to stay the proceedings. Judge Snow admitted on July 20, 2015, that orders he has issued and continues to issue could be vacated if he later is recused. Transcript, July 20, 2015, Status Conference, *Melendres v. Arpaio*, Pages 62-64, attached as Exhibit 12. It will be impossible to “put the genie back in the bottle” if the case is not stayed.

Montgomery seeks to intervene solely to protect his legal and property rights, which are being run roughshod on by Judge Snow without an opportunity for him to protect his rights, assert his interests, receive due process, or be heard.

On July 15, 2015, Montgomery filed his Notice of Appeal (Docket No. 1173) appealing from the trial court’s --

- a) Order of May 14, 2015 (Docket No. 1093) denying Pro Hac Vice Admission of Jonathon Moseley Striking Putative Intervenor's Motion to Intervene and Striking Putative Intervenor's Motion to Disqualify. (Moseley being

¹ The motion is amended only in filing a companion addendum of relevant portions of the record as exhibits and adding cites herein to specific page numbers in those exhibits.

Montgomery's attorney as an associate to Larry Klayman.)
Attached as Exhibit 6.

- b) Order of June 10, 2015 (Docket No.1164) denying motion for disqualification.
- c) Order of July 10, 2014 (Docket No. 1167) denying motion for reconsideration of Appellant's motion to intervene and application for attorney to practice *pro hac vice*.
- d) All other orders and rulings adverse to and/or which refer or relate to Putative Intervenor Dennis L. Montgomery.

This Court previously vacated Judge Snow's over-use of Justice Department monitors for matters that have

no bearing on the constitutional rights at stake here. We therefore vacate these particular provisions and order the district court to tailor them so as to address only the constitutional violations at issue. See *Milliken*, 433 U.S. at 282.

Melendres v. Arpaio, Record No. 13-16285, U.S. Court of Appeals for the Ninth Circuit, Opinion April 15, 2015, page 23.

Yet many of the abuses against Montgomery's tangible property and intellectual property and rights are occurring through Judge Snow's orders to his monitors to seize Montgomery's property and take various actions without notice, due process, or an opportunity to be heard, such as on April 23, 2015, in the hearing, see Exhibit 1, attached, and by Order, April 27, 2015, (Docket No. 1033). Judge Snow ruled that his monitors would not be "shackled" by Defendants'

constitutional rights. (Doc. No. 1117-1, Ex. 9., 5/14/15; Transcript at 49:15-21, 51, 56), attached as Exhibit 11.

It would be impractical for Montgomery to also file a motion for a stay in the trial court because Judge Snow refused to allow his counsel to enter the case pro hac vice and for him to intervene in the case.

However, a motion to stay in the trial court below awaiting appeal (Docket No. 1171) was filed by Defendant Sheriff Joe Arpaio (“Arpaio”) and Chief Deputy Gerard Sheridan (“Sheridan”) (specially appearing) of Arizona’s MCSO. On July 20, 2015, by a Minute Order at (Docket No. 1179), Judge Snow denied the motion.

III. RELATED CASE WHICH MONTGOMERY RELIES ON

In a related petition before this Ninth Circuit, Defendant Arpaio and non-party Sheridan filed a petition for writ of mandamus on August 6, 2015, requiring Judge Snow’s recusal. The petition is *Joseph Arpaio and Gerard Sheridan v. U.S. District Court for the District of Arizona and Manuel de Jesus Ortega Melendres*, Case No. 15-72440.

Montgomery concurs in and agrees with Arpaio’s and Sheridan’s petition, joins in their petition for the recusal of Judge Snow, and incorporates Arpaio’s and Sheridan’s petition in all respects as if set forth herein in support of his motion for a stay the case, and also in support of his appeal directly.

Montgomery's motion for recusal of Judge Snow compares with Arpaio's and Sheridan's petition for writ of mandamus in only two respects:

- (1) Montgomery also explicitly moves that the Ninth Circuit vacate the orders issued by Judge Snow subsequent to the conflict of interest.
- (2) Montgomery also filed an affidavit under 28 U.S.C. § 144 on May 7, 2015 (Docket No. 1067) which compels unconditionally and without subjective analysis or discretion that Judge Snow stop all work on the case and that a different judge hear the question of recusal.

Both pleadings seeking recusal by both Arpaio and Sheridan and here Montgomery are informed by the expert analysis of noted judicial ethics expert Professor Ronald Rotunda, whose affidavits is attached as Exhibit 17.

IV. STATEMENT OF FACTS RELEVANT TO THE MOTION

Prior to April 23, 2015, Dennis Montgomery had never been involved or mentioned in the case below. Yet in the evidentiary hearing April 21-24, Judge Snow expanded the case, and *sua sponte* started attacking Montgomery. See, Transcript, April 23, 2015, attached as Exhibit 1, Pages 644:11-660:17.

Judge Snow then denied Montgomery's motions seeking to receive due process, notice, and an opportunity to be heard guaranteed by the Fifth Amendment to the U.S. Constitution concerning his property and the due process clause of the Fourteenth Amendment to the U.S. Constitution. See Order, May 14,

2015, attached as Exhibit 6; Order, May 29, 2015, attached as Exhibit 7, Order July 10, 2015, attached as Exhibit 8.

The lawsuit filed in 2007 terminated on October 2, 2013, in the “Supplemental Permanent Injunction / Judgment Order.” (Docs. No. 606, 670.) Implementation was set for a hearing in April 2015. (See, Order, January 16, 2015, Page 2, Doc. No. 856).

V. STANDARD OF REVIEW

Invernor requests a stay pending appeal pursuant to Federal Rules of Appellate Procedure (“FRAP”) Rule 8. In *Nken v. Holder*, the Supreme Court noted four factors required:

(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

556 U.S. 418, 434 (2009).

VI. ARGUMENT

A. STANDING OF MONTGOMERY

It has already been decided that the intellectual property, documents, data, work product, copyrighted material, and things are Montgomery’s personal property. See “Nevada Orders,” identified, *supra*. Montgomery has a personal stake in this matter in which his property has been seized by verbal order on April

23, 2015, see Transcript, April 23, 2015, attached as Exhibit 1, Pages 653:18-25; 657:11-660:17, and by written Order, April 27, 2015, (Docket No. 1033).

**B. PLAINTIFF HAS A SUBSTANTIAL LIKELIHOOD OF
PREVAILING ON HIS APPEAL ON THE MERITS**

1) Application *Pro Hac Vice*

Montgomery has a substantial likelihood of prevailing on his appeal on his attorney's motion to appear *pro hac vice*. Montgomery has a right to choose attorneys whom he believes will be knowledgeable enough of his circumstances to represent him effectively and meaningfully, whom he can afford, and who will protect his rights on other topics.

But here, especially, Montgomery would suffer unusual hardship. Montgomery is both indigent and medically disabled. He could not afford regular counsel. Also, the litigation is controversial and political, so that it would be extremely difficult to find a local lawyer whose livelihood depends upon regularly appearing before Judge Snow to defend Montgomery against this rush to judgment.

A person is entitled to his choice of counsel, including an attorney appearing *pro hac vice*: "A defendant's right to the counsel of his choice includes the right to have an out-of-state lawyer admitted *pro hac vice*." *U.S. v. Lillie*, 989 F.2d 1054, 1056 (9th Cir. 1993); *see also Panzardi-Alvarez v. U.S.*, 879 F.2d 975, 980 (1st Cir. 1989)("[A] decision denying a *pro hac vice* admission necessarily implicates

constitutional concerns."), *cert. denied*, 493 U.S. 1082, 110 S. Ct. 1140, 107 L. Ed. 2d 1045 (1990). A person's right to retain counsel of his choice therefore represents " 'a right of constitutional dimension'" *U.S. v. Cunningham*, 672 F.2d 1064, 1070 (2d Cir.1982) (citing *U.S. v. Wisniewski*, 478 F.2d 274, 285 (2d Cir.1973)), the denial of which may rise to the level of a constitutional violation. *Birt v. Montgomery*, 725 F.2d 587, 592 (11th Cir.) (*en banc*), *cert. denied*, 469 U.S. 874, 105 S.Ct. 232, 83 L.Ed.2d 161 (1984); *Wilson*, 761 F.2d at 278-79. The right to retain counsel of choice stems from one's right to decide what kind of case he wishes to present. *U.S. v. Nichols*, 841 F.2d 1485, 1502 (10th Cir.1988).

"Attorneys are not fungible" and often "the most important decision a defendant makes in shaping his defense is his selection of an attorney." *U.S. v. Laura*, 607 F.2d 52, 56 (3d Cir.1979); *Nichols*, 841 F.2d at 1502; *Glasser v. U.S.*, 315 U.S. 60, 75, 62 S.Ct. 457, 467, 86 L.Ed. 680 (1942).

Judge Snow denied Moseley's application to be admitted *Pro Hac Vice* on unsupported speculation that there could be a conflict of interest. But the record does not contain any basis for disqualification. Moseley filed a "Clarification of Motion for Admittance *Pro Hac Vice* of Jonathon A. Moseley," dated May 13, 2015, (Docs. No. 1080, 1081) stating that (*emphasis added*):

Neither Dennis L. Montgomery nor his counsel are adverse to Sheriff Arpaio, his deputies, the Cold Case Posse, or MCSO **in any respect**, particularly since this case involves a contempt proceeding over allegations

of profiling illegal immigrants.

No party has moved for disqualification of Moseley as counsel for Montgomery. No facts have been entered in the record to establish any conflict.

Simply reciting that Moseley represents Arpaio in an unrelated matter does not establish any conflict of interest. Disqualification applies “where serious conflict exists.” *See Dunton v. County of Suffolk*, 729 F.2d 903, 909 (2d Cir.1984), *amended* 748 F.2d 69 (2d Cir.1984). *The proponent of disqualification must demonstrate the existence* of a conflict of interest which is “serious.”

The relevant test for disqualification is whether the other representation is “substantially related” to the current representation. *See Gas-A-Tron of Arizona v. Union Oil Co. of California*, 534 F.2d 1322, 1325 (9th Cir.), *cert. denied*, 429 U.S. 861, 97 S.Ct. 164, 50 L.Ed.2d 139 (1976). A substantial relationship is found if the factual contexts of the two representations are similar or related. *Trone v. Smith*, 621 F.2d 994 (C.A.9 (Cal.), 1980) (*emphasis added*).

We held that the "relevant test for disqualification is whether the former representation is '**substantially related' to the current representation.**" *Id.* at 998; see *Gas-A-Tron of Arizona*, *supra*, 534 F.2d at 1325; *Westinghouse Electric Co. v. Gulf Oil Corp.*, 588 F.2d 221, 223 (CA7 1978). "Substantiality is present **if the factual contexts of the two representations are similar or related.**" *Trone*, *supra*, 621 F.2d at 998.

Trust Corp. of Montana v. Piper Aircraft Corp., 701 F.2d 85 (C.A.9 (Mont.), 1983) (*Emphases added*).

Here, the “*the factual contexts of the two representations*” are not “*similar or related.*” *Id.* Representation of Montgomery in the current case shares no operative facts nor factual circumstances in common with Arpaio’s challenge to the constitutionality of Obama’s executive order on amnesty for illegal aliens.

Montgomery has nothing to do with immigration, immigration enforcement or law enforcement. He has had no involvement with, role in, knowledge of, or experience in those topics. Montgomery has no position on the proper way to conduct traffic stops, find probable cause, or the like.

2) Motion to Intervene

Montgomery has a substantial likelihood of prevailing on his appeal on his motion to intervene. The U.S. Government admits that they do not claim to own the documents, items, or things claimed and owned by Montgomery. The attorney representing the DoJ, Raphael Gomez, admitted in open Court on July 20, 2015:

The United States *does not know whether there are any documents in the Montgomery files* that are in fact classified or sensitive, but *there is a representation* that there were documents that were of the United States.

Transcript, July 20, 2015, Status Conference, *Melendres v. Arpaio*, Page 43 (*Emphases added*) (*argument by Raphael Gomez for the DoJ*).

MR. GOMEZ: Yes, Your Honor. I believe on May 8th *the Court had issued an order to the defendants' counsel instructing the defendants' counsel to contact the United States; actually, the CIA general counsel's office.* At that point, we -- I'm an attorney in the Civil

Division of the Department of Justice in Washington, D.C., and we were contacted, and pursuant to that instruction we had spoken to defendants' counsel, and with the purpose of, *since there had been a representation made that documents contained in what I'll refer to as the Montgomery documents* were either documents of the United States or documents that -- implied -- were classified or sensitive.

Transcript, July 20, 2015, Status Conference, *Melendres v. Arpaio*, Page 42 (*Emphases added*).

That is, Judge Snow ordered Montgomery's property to be handed over to Raphael Gomez of the DoJ based on the off-chance and mere possibility that there might be government documents among Montgomery's documents. *This is the same "callous disregard" for Montgomery's rights* that the Honorable Phillip Pro and Magistrate Valerie Cooke condemned in the Nevada Orders, *supra*.

Federal Rules of Civil Procedure ("FRCP") Rule 24 governs intervention by additional parties in existing litigation in the federal courts:

Rule 24. Intervention

(a) INTERVENTION OF RIGHT. On timely motion, the court must permit anyone to intervene who:

* * *

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) PERMISSIVE INTERVENTION.

(1) *In General*. On timely motion, the court may permit anyone to intervene who:

* * *

(B) has a claim or defense that shares with the main action a common question of law or fact.

Montgomery's motion is timely. The case started to involve Montgomery only in late April of 2015. Montgomery filed his motion within two weeks. Montgomery also complied with FRCP Rule 24(c) by providing notice and a proposed pleading.

3) Motion for Disqualification of Judge Snow

Montgomery has a substantial likelihood of prevailing on his motion for recusal, as does Arpaio and Sheridan in their related petition for writ of mandamus also requesting recusal. Montgomery filed his affidavit under 28 U.S.C. § 144 on May 7, 2015 (Docket No. 1067), and in that pleading also further claimed essentially the same additional grounds requiring recusal of Judge Snow under 28 U.S.C. § 455 as raised by Arpaio and Sheridan.

Accordingly, Montgomery joins in and agrees with the petition by Arpaio and Sheridan in their arguments for recusal of Judge Snow, and incorporates their petition by reference herein for the purposes of this motion for a stay.

Montgomery is in agreement with the Defendants Arpaio and Sheridan, but adds an additional demand for recusal under 28 U.S.C. § 144 and also moves this Court to vacate Judge Snow's orders issued while a conflict of interest exists, particularly as they relate to Dennis Montgomery.

The demands for recusal are timely. Most of the circumstances requiring recusal were created by Judge Snow himself starting only on April 23, 2015.

The courts strive to eliminate even the appearance of bias. “Thus even if there is no bias in fact, an appearance of bias or prejudice requires recusal if it is sufficient to raise a question in the mind of 'the average citizen' about a judge's impartiality.” *York v. United States*, 785 A.2d 651, 655 (D.C. 2001).

Judge Snow decided to make himself, his wife, and Montgomery major topics. Arpaio’s lawyers filed an objection to procedures and on the last page also to Judge Snow “questioning Defendant Arpaio on areas on which he did not receive prior notice.” (Docket No. 1032, April 28, 2015.) Judge Snow then ruled that his questioning about the “Grissom Investigation” (Judge Snow’s wife) and the “Seattle operation” (Dennis Montgomery) will not be excluded. (Docket No. 1046, May 4, 2015.) Judge Snow injected personal issues into the case on April 23 and April 24, 2015. *See*, Motion for Recusal or Disqualification of District Court Judge G. Murray Snow, May 22, 2015, Pages 8-9. (Docket No. 1117).

Montgomery filed an affidavit and certificate under 28 U.S.C. § 144

“Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding. The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists....”

Montgomery's affidavit on May 7, 2015 (Docket No. 1067) compelled Judge Snow to "proceed no further" in the case" and requires "another judge shall be assigned to hear such proceeding," without subjective analysis or discretion.

A judge's impartiality "might reasonably be questioned" by the public where the judge's wife volunteers that the judge hates the defendant and will do anything to hound him from office (Docket No. 1117) – and neither the judge nor his wife have denied it, sought to explain the admission, nor apologized.

Karen Grissom, her husband Dale, and their son Scott encountered Judge Snow's wife, Cheri Snow, in a Someburros restaurant in Tempe, Arizona. Cheri Snow and Karen Morris (now Grissom) had known each other from childhood and caught up on news. Dale and Scott report passively listening. Cheri Snow boasted that her husband was presiding over the trial of Sheriff Joe Arpaio, that Judge Snow hated Arpaio and will do whatever it takes to get Arpaio out of office. An investigator confirmed that Judge Snow's wife was in the restaurant on that day and time. *See, Transcripts* of interviews with Karen Grissom, Dale Grissom, and Scott Grissom, attached to the motion for recusal of Arpaio and Montgomery.

Neither Judge Snow nor his wife have denied that Cheri Snow volunteered that Judge Snow hates Arpaio and will do anything to get him out of office, denied that Judge Snow in fact hates Arpaio or denied that Judge Snow is using the

litigation to embarrass Arpaio in his re-election to remove him from office. Judge Snow invited the U.S. Attorney to send a prosecutor to monitor this civil case.

The Grissoms have never wavered in their account. The Grissoms are by their own report and from the investigation non-political, uninterested witnesses who have never had any relationship with or support for Sheriff Joe Arpaio. Karen Grissom's recollection in the transcript is the most detailed and specific because, as Dale Grissom and Scott Grissom report in the transcript, the women were primarily talking to each other catching up on their lives since their childhood acquaintance. *See, Interview Transcripts, id.*

Judge Snow has "personal knowledge of disputed evidentiary facts concerning the proceeding." Judge Snow will have or already does have a private explanation from his own wife of these disputed facts and events.

Judge Snow has made clear that he insists on pursuing the Karen Grissom / Cheri Snow and the Montgomery investigation as proving some allegations (not yet identified) against the Defendants in the case below. Judge Snow over-ruled the Defendants' objections to exclude the topics. (Docket No. 1046.)

Therefore, any defense attorney must call Judge Snow and Judge Snow's wife as witnesses in order to present a thorough defense to whatever charges Judge Snow plans to bring. Judge Snow is likely to preside over the testimony and cross-examination of his own wife, (Docket No. 1117), who will be testifying about him.

Judge Snow simultaneously refuses to exclude the topics, yet claims that his wife would not offer admissible testimony. These are inextricably linked. Judge Snow's insistence, over objection, that the proceedings below must include the investigation into what his wife said about Judge Snow being biased necessarily causes his wife's testimony to become relevant. Without Cheri Snow's testimony, charges or allegations against the Defendants for investigating Karen Grissom's tip about what Cheri Snow said could not be sustained as relevant issues in the case.

C. MONTGOMERY WILL BE IRREPARABLY HARMED ABSENT A STAY

A stay is required because Montgomery is being harmed in ways that cannot be adequately remedied. A stay is required because if this Court determines that Judge Snow should recuse himself, any and all orders or proceedings will likely have to be vacated, as Judge Snow admitted on July 20, 2015 --

However, I am wondering if the County has been fully advised that one of the positions Mr. Popolizio and Mr. Masterson is taking is that *if in fact this Court is removed by the Ninth Circuit from presiding over this case, the supplemental permanent injunction and the findings of fact and conclusions of law I made three years ago should be vacated, in which case there would be no injunctive relief on which the County or the plaintiffs could rely.*

* * * So I wonder if the County has been fully advised, if the plaintiffs in United States versus Arpaio have been fully advised, that *the movants are taking the position*

not only that I should be removed from presiding over the contempt hearing, but that the injunctive relief and the findings of fact and conclusions of law I entered years ago should be vacated.

Transcript, July 20, 2015, Status Conference, *Melendres v. Arpaio*, Pages 62-64 (*emphases added*).

D. PLAINTIFFS WILL NOT BE HARMED BY A STAY

It cannot be overlooked that this case was concluded on October 2, 2013 (Docs. No. 606, 670) – 21 months ago. Plaintiffs’ attorneys suggest that they have to wait for relief, but legally, they have already obtained a final judgment.

These are post-judgment proceedings that concern implementation only. (See, Order, January 16, 2014, Page 2, Doc. No. 856). The only legitimate issue remaining is whether MCSO disobeyed the injunction on purpose or was merely slow in implementation in a Sheriff’s office that serves 4 million Arizona residents.

However, the Plaintiffs will not receive implementation of the injunction any faster or slower either way. Regardless of any stay, MCSO and Arpaio are facing sufficient motivation to implement the injunction as quickly as possible. MCSO still knows that it must comply with the permanent injunction and any delay can and will be used against them when the stay is lifted.

E. THE PUBLIC INTEREST FAVORS A STAY

This case is ostensibly about upholding the constitutional rights of the Plaintiffs and those similarly-situated. Yet the District Court is violating the

constitutional rights of Montgomery. It is in the public interest that the federal courts respect all the constitutional rights of all persons.

Plaintiffs purport to represent the community. The analysis is the same as in (D) above. Either MCSO is sufficiently motivated by now or they are not. A stay will not change that. A possible decision as to state of mind will not change that.

However, the public interest is also served by improving the reputation of the federal judiciary in the eyes of the public.

VII. CONCLUSION AND REQUEST FOR RELIEF

This Court should order a stay of the proceedings and vacate Judge Snow's orders until the appeal is heard.

Dated: August 13, 2015

Respectfully submitted,

/s/ Larry Klayman

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CERTIFICATE OF COMPLIANCE

I certify that this petition complies with the page limitations of Fed. R. App. 27(d), and that this motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman style.

CERTIFICATE OF SERVICE ²

I hereby certify that on August 13, 2015, I electronically filed the foregoing document with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit by using the Ninth Circuit's CM/ECF system, and I caused a copy of the foregoing document to be served upon the following counsel of record in the case in the trial court below by first-class U.S. mail, postage prepaid:

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² Appellant / Movant, by counsel, carefully reviewed recent filings in the record in the court below to update and confirm this certificate of service for this amended version of the motion. Attorneys appearing in the case below include those representing many non-parties and witnesses and changes that resulted from the Ninth Circuit's ruling that the Maricopa County Sheriff's Office should be included legally as part of Maricopa County, Arizona.

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CASE NO. 15-16440

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MANUEL de JESUS ORTEGA MELENDRES, *et al.*, Plaintiffs

v.

JOSEPH M. ARPAIO, Sheriff of Maricopa County,
Arizona; *et al.*, Defendants

and

DENNIS L. MONTGOMERY, Putative Intervenor

From the United States District Court
For the District of Arizona
The Honorable G. Murray Snow, Presiding
Case No. CV-07-2513

EXHIBITS IN SUPPORT OF MOTION FOR STAY ON APPEAL
Exhibits 1 through 17

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Putative Intervenor Dennis L. Montgomery, by counsel, hereby files the following exhibits in support of his motion for stay pending appeal:

Exhibit 1 – Transcript Excerpts, April 23, 2015, Evidentiary Hearing, introducing into the case for the first time Dennis Montgomery and the seizure and distribution of his documents, intellectual property, intangible property and tangible property.

Exhibit 2 – Application of Attorney for Admission to Practice *Pro Hac Vice* Pursuant to LRCiv 83.1(b)(2) of Jonathon Moseley May 7, 2015, to represent Montgomery (attached statement remains under seal)

Exhibit 3 – Motion to Intervene of Dennis Montgomery, May 7, 2015

Exhibit 4 – Motion for Reconsideration of Motion for Admittance Pro Hac Vice of Jonathon A. Moseley and Memorandum of Law in Support Thereof, filed to represent Dennis Montgomery, May 18, 2015

Exhibit 5 – Order, Judge Snow, May 4, 2015

Exhibit 6 – Order, Judge Snow, May 14, 2015

Exhibit 7 – Order, Judge Snow, May 29, 2015

Exhibit 8 – Order, Judge Snow, July 10, 2015, denying Motion for Reconsideration (Appellant is not aware of any hearing or hearing transcript related to Judge Snow's order on Montgomery's Motion for Reconsideration)

Exhibit 9 – Order, Judge Snow, July 24, 2015

Exhibit 10 – Transcript Excerpts, May 8, 2015, Status Conference

Exhibit 11 -- Transcript Excerpts, May 14, 2015, Status Conference

Exhibit 12 -- Transcript Excerpts, July 20, 2015, Status Conference,

Exhibit 13 -- Transcript Excerpts, July 24, 2015, Status Conference

Exhibit 14 – Facebook Message from Karen Grissom to Sheriff Joe Arpaio

Exhibit 15 – Petition for Writ of Mandamus -- for disqualification of the Honorable G. Murray Snow, filed by Sheriff Joe Arpaio and Gerard Sheridan in Ninth Circuit as Case No. 15-72440, August 6, 2015 (attached here without exhibits)

Exhibit 16 – Excerpt of Transcript of Investigator's Interview with Karen Grissom, October 26, 2013, concerning conversation with the wife of Judge Snow concerning Sheriff Joe Arpaio

Exhibit 17 – Declaration of Professor Ronald Rotunda in support of Dennis Montgomery's motion for recusal of Judge Snow

Dated: August 13, 2015

Respectfully submitted,

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Exhibit 1

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF ARIZONA
3

4 Manuel de Jesus Ortega)
Melendres, et al.,)
5)
Plaintiffs,) CV 07-2513-PHX-GMS
6)
vs.) Phoenix, Arizona
7) April 23, 2015
Joseph M. Arpaio, et al.,) 8:34 a.m.
8)
Defendants.)
9 _____)

10
11
12
13
14
15 REPORTER'S TRANSCRIPT OF PROCEEDINGS
16 BEFORE THE HONORABLE G. MURRAY SNOW
17 (Evidentiary Hearing Day 3, pages 512-817)
18
19
20
21

22 Court Reporter: Gary Moll
23 401 W. Washington Street, SPC #38
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24 (602) 322-7263

25 Proceedings taken by stenographic court reporter
Transcript prepared by computer-aided transcription

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I N D E X

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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Admitted</u>
78	MCSO News Release, <i>Sheriffs Deputies Raid Phoenix Business for Employees using False ID, All Arrested Suspected of Being in US Illegally</i> dated 9/20/2012	561
84	MCSO News Release, <i>Sheriffs Deputies Execute Search Warrant at Concrete Company in Glendale</i> dated 10/18/2012	565
85	MCSO Shift Summary (Sonoran Concrete) DR 12-156907 dated 10/18/2012 (MELC157123 - MELC156125)	565
87	MCSO News Release, <i>72st Operation Targeting False Identifications Used to Gain Employment</i> dated 3/14/2013	570

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88	MCSO Shift Summary (America's Taco Shop) DR 12-108378, DOJ Ex. 284 dated 3/14/2013 (MCS001291219 - MCS001291221)	571
132	E-mail chain from Sousa re "FW: Updated stats" and attaching "Criminal Employments stats 03-28-12.doc; 03-28-12.doc" dated 3/28/2012 (MELC114928 - MELC1 14931)	756
168	MCSO Memorandum from Sousa re "Document Production Request Regarding Request IAM-22" dated 1/12/2015 (MELC 114948)	706
169	E-mail chain from Sousa re "Current HSU Ops Manual" originally dated March 27, 2012, then January 13, 2015, and attaching HSU ops manual (MELC114960 - MELC114967)	677
180	MCSO News Release, <i>West Valley Asian/International Supermarket Under Investigation by Sheriff's Office, Arpaio Says</i> dated 1/17/2013 (MELC109370 - MELC109371)	568
182	MCSO News Release, <i>6 Adults and One Juvenile Detained in Human Smuggling Operation</i> dated 5/18/2013 (MELC167859 - MELC167860)	572
193A	A Video Clip 1 of Story re Crime Sweep, October 19, 2013	580
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196C	Video Clip 3 of Fox Latino at Republican Convention, August 31, 2012	547
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201A	Video Clip 1 of Maldonado Interview published April 13, 2012	521
201B	Video Clip 2 of Maldonado Interview published April 13, 2012	524
203	Video Excerpt from The Joe Show, released February 26, 2014	585
212`	Email Chain from J. Sousa to J. Spurgin, et. al., re "Master Stat Sheet for Op Desert Sky" dated March 31, 2011 (MELC172485 - MELC172503) Sousa Depo Exhibit 192	725
216	Email from J. Sousa to M. Trowbridge, et al., re "The Saving of Emails for Ongoing Lawsuits per Att Tim Casey" dated March 27, 2012 (MELC173868 - MELC173870)	668

P R O C E E D I N G S

THE CLERK: All rise. The United States District Court for the District of Arizona is now in session, the Honorable G. Murray Snow presiding.

08:34:20

THE COURT: Please be seated.

THE CLERK: Civil case number 07-2513, Melendres v. Arpaio, on for continued evidentiary hearing.

THE COURT: Do we have any matters of business, housekeeping to take up?

08:34:34

MR. YOUNG: Nothing from plaintiffs, Your Honor.

MS. IAFRATE: No, Your Honor.

MR. WALKER: Nothing from the County at this time, Your Honor.

MR. COMO: No, Your Honor.

08:34:49

THE COURT: Please proceed, Mr. Young.

MR. YOUNG: Thank you, Your Honor.

JOSEPH M. ARPAIO,
recalled as a witness herein, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. YOUNG:

Q. Good morning, Sheriff.

A. Good morning.

Q. In the early part of 2012 you believed that illegal

08:34:56

1 immigration was your job, and you continued -- and you intended
2 to continue to do that job, correct?

3 A. Certain functions, yes.

4 Q. You focused on illegal immigration because many people
5 thought it was important, right?

08:35:13

6 A. I can't hear you. Could you repeat that?

7 Q. You did that because many people thought that illegal
8 immigration was an important issue, is that right?

9 A. That's one of the reasons. The other reason is to enforce
10 the laws.

08:35:27

11 Q. You did an interview with Hector Maldonado of Conservative
12 TV Online in April 2012, correct?

13 A. I don't recall.

14 Q. Well, I'm going to ask you to take a look at PX --
15 Exhibit 201A.

08:35:47

16 A. Is that in here?

17 THE COURT: Do you want it played, Mr. Young?

18 MR. YOUNG: Yes. We're having a little trouble with
19 the sound, Your Honor, apologies.

20 (Video clip played as follows:)

08:36:24

21 SHERIFF ARPAIO: So I have a job to do, illegal
22 immigration.

23 (Video clip stopped.)

24 MS. IAFRATE: This is not in evidence.

25 THE COURT: Yes. Shall we deal with -- I'm going to

08:36:48

1 Q. Sheriff, at the sheriff's office there's a chain of
2 command, correct?

3 A. Yes.

4 Q. And you're the top link in that chain of command?

5 A. Yes.

10:54:08

6 Q. And you have people that report to you, correct?

7 A. Yes.

8 Q. Back in 2011, can you tell me which chiefs directly
9 reported to you?

10 A. I believe it was Chief Deputy Sheridan. He was the chief
11 deputy.

10:54:27

12 Q. And then would he be the only direct report to you, or did
13 others directly report to you?

14 A. I believe I had the public information officer reporting
15 directly to me. We do have about 4500 employees, plus 8,500 in
16 the jails that I'm responsible for, but I do it through
17 delegating authority.

10:54:50

18 Q. There was a group called the Human Smuggling Unit. Are you
19 familiar with that unit?

20 A. Yes.

10:55:15

21 Q. Who was the supervisor of that unit?

22 A. I believe it was Chief Brian Sands.

23 Q. Did he directly report to you?

24 A. No.

25 Q. In the human -- the Human Smuggling Unit wasn't housed in

10:55:28

1 the same building that you were at, correct?

2 A. No, it was not.

3 Q. How did you get your information regarding what was
4 occurring with the Human Smuggling Unit?

5 A. Well, sometimes I would get it from our public information
6 officer that would receive calls on these type of situations,
7 and sometimes I would probably get it from Brian Sands.

10:55:55

8 Q. Did you ever go out to the Human Smuggling Unit where they
9 were housed?

10 A. I may have a couple times.

10:56:22

11 Q. Did you receive briefings from anyone from the Human
12 Smuggling Unit?

13 A. May have, but I don't recall.

14 Q. I want to show you what was shown to you in direct
15 examination, Exhibit 78.

10:56:48

16 Sheriff, are you familiar with the different types of
17 duties that occurred at the Human Smuggling Unit?

18 A. Are you referring to the rank?

19 Q. No. For example, what they did. You -- we've heard about
20 interdictions, correct?

10:57:28

21 A. Yes.

22 Q. Traffic stops?

23 A. Yes.

24 Q. And then also there were search warrants executed regarding
25 employer ID and identity thefts, correct?

10:57:39

1 A. Yes.

2 Q. Those employer search warrants regarding identity thefts,
3 that was another area of the law that you could continue to
4 enforce, correct?

5 A. Yes.

10:57:53

6 Q. These search warrants, for example, the ID theft raid
7 discussed in this Exhibit 78, that wasn't the result of a
8 traffic stop, correct?

9 A. No.

10 Q. Sheriff, when did you become aware that some of your
11 previous actions from MCSO violated the preliminary injunction?

10:58:37

12 A. I don't have the time frame, but it was, as I say, many,
13 many, many months later. Could have been before the -- around
14 the time of the -- was it 1913, May 1913?

15 Q. 2013?

10:59:11

16 A. 2013.

17 Q. When the judge issued its findings of fact and conclusions
18 of law?

19 A. Yes. And that's the time I sent a newsletter to all the
20 employees regarding the judge's decision.

10:59:27

21 Q. You're saying that you sent out a newsletter. Are you
22 talking about some sort of Briefing Board?

23 A. Yes.

24 Q. And why did you send out a Briefing Board in May 2013?

25 A. It had to do with detainment and also using race. Those

10:59:44

1 are two issues that I wanted to get across to our people.

2 Q. Well, explain more. What were you trying to get across to
3 your people in May 2013 regarding --

4 A. That it should not be done.

5 Q. That what should not be done?

11:00:07

6 A. By using race or detaining people illegally.

7 Q. You were not familiar with those concepts in the
8 preliminary injunction until May 2013?

9 A. No.

10 Q. My statement was accurate?

11:00:25

11 A. Yes.

12 Q. There came a time where a monitor was appointed, correct?

13 A. Yes.

14 Q. Did you express what your involvement with the monitor
15 would be to your organization?

11:00:54

16 A. If I recall, I think the monitor came to my office, I
17 believe it was around January 1914 -- 2014. We had a nice
18 discussion. He has a law enforcement background, so we had
19 something in common.

20 And I believe he mentioned that he would rather deal
21 with my staff, realizing that I had a large organization to
22 run, and I said, you know, that's a good idea. Talk to my
23 staff. And I believe that's what's been going on ever since.

11:01:17

24 Q. Since the monitor has been appointed have you done anything
25 to block him from doing his job?

11:01:47

1 A. No.

2 Q. Have you been open and honest with him?

3 A. Yes.

4 Q. Have you encouraged your staff to be open and honest with
5 him?

11:01:59

6 A. Yes.

7 Q. There was a portion of the 2014 order that called for
8 community outreach.

9 Do you recall that?

10 A. Yes.

11:02:11

11 Q. And it was ordered that your office was to do some meetings
12 regarding community outreach.

13 Do you recall that?

14 A. Yes.

15 Q. And your lawyers objected to that based on the First
16 Amendment and your First Amendment to either speak or not
17 speak, correct?

11:02:24

18 A. Yes.

19 Q. And ultimately the judge rescinded that piece of the order,
20 correct?

11:02:43

21 A. Yes.

22 Q. On direct examination you were played an approximately
23 10-second clip in which you talked about community outreach.

24 Do you recall that?

25 A. Yes.

11:02:57

1 Q. Although it was a small clip, do you recall what you meant
2 by that statement?

3 A. Is that the one where I had an officer that was killed?

4 Q. Yes. And on the tape, the portion that was played for you
5 talked about community outreach.

11:03:18

6 Do you recall what you were referring to?

7 A. I was really occurring -- talking about myself, because
8 whether you want to call it outreach or not, I personally
9 stopped two vehicles with the four Hispanics in each vehicle.
10 They had no problems. They were very friendly. Came out,
11 wanted my photograph. I let them take my pictures.

11:03:48

12 I call that my outreach where I actively got involved,
13 because I was there trying to give support to my deputies to
14 get intelligence on gang members that we believe killed my
15 officer.

11:04:13

16 Q. Investigating a shooting of one of your officers didn't
17 violate the preliminary injunction, did it?

18 A. No.

19 Q. Trying to find who killed that officer didn't violate the
20 preliminary injunction, did it?

11:04:34

21 A. No.

22 Q. Were you involved in any way prior to the original trial in
23 gathering evidence?

24 A. No.

25 Q. Did anyone ever ask you to review documents and videos in

11:05:08

1 preparation for the original trial?

2 A. No.

3 Q. When a request for documents and/or videos comes into the
4 sheriff's office, where does it normally go?

5 A. It would -- are you talking about legal documents?

11:05:43

6 Q. So there's a request that someone in your agency gather
7 documents. Where would that request go?

8 A. I presume if it's legal it will go to our legal office. If
9 it's other situations, it would go to the people responsible
10 for that request, I guess.

11:06:06

11 Q. You don't get involved in the gathering and disseminating
12 of discovery requests?

13 A. No.

14 Q. That's up to your legal liaison's office, normally?

15 A. Yes.

11:06:26

16 Q. Those are the people that process the paperwork?

17 A. Yes.

18 Q. I want to talk to you about the May 2014 hearing that you
19 attended.

20 Do you recall that?

11:06:44

21 A. Yes.

22 Q. It was a hearing that you attended, and you had interaction
23 with Judge Snow, correct?

24 A. Yes.

25 Q. And you all were talking about gathering some videotapes.

11:07:03

1 Do you recall that?

2 A. Yes.

3 Q. Do you recall what Judge Snow's directive was of you in
4 relation to gathering those videotapes?

5 A. Well, if I recall, it was like a two-and-a-half-hour
6 session, but I believe he mentioned something about the
7 monitor, cooperate with the monitor.

11:07:18

8 Q. Then following that hearing, where did you go?

9 A. I went back to my office.

10 Q. And what did you do there?

11:07:41

11 A. Well, eventually we had a meeting, I believe, with the
12 chief deputy, counsel Tom Liddy and Tim Casey, and I believe
13 there was another lawyer in the room.

14 Q. Christine Stutz?

15 A. Yes.

11:08:05

16 Q. At some point we heard Chief Trombi say that he was
17 summoned into the room.

18 Do you recall that?

19 A. Yes.

20 Q. And he was told to send out an e-mail.

11:08:16

21 Do you recall that?

22 A. Yes.

23 Q. You weren't the one that told him to send out an e-mail,
24 correct?

25 A. I did not.

11:08:23

1 Q. Chief Sheridan told him to send out the e-mail?

2 A. I believe he did.

3 Q. Did anyone in the room object to that directive?

4 A. No.

5 Q. Not even counsel?

11:08:34

6 A. No.

7 Q. Do you know what happened as a result of that e-mail that
8 was sent out by Chief Trombi?

9 A. You mean after the fact?

10 Q. Yes.

11:09:12

11 A. Well, I don't directly know, but I believe they were trying
12 to obtain videos.

13 Q. Do you know if videos were obtained?

14 A. I believe they were.

15 Q. Sheriff, on direct examination you were asked do you think
16 there should be consequences for your actions.

11:09:25

17 Do you recall that?

18 A. Yes.

19 MS. IAFRATE: And in fact, can you put up 71, page 2.

20 BY MS. IAFRATE:

11:10:11

21 Q. This was the document that we started your testimony with.
22 In fact, in this document that was filed, with your permission
23 and your consent, says, on the second line, that there are
24 consequences for these violations, correct?

25 A. What number --

11:10:32

1 Q. It's the --

2 A. -- paragraph?

3 Q. -- first full sentence.

4 A. Yes.

5 Q. You admit that there should be consequences, correct?

11:10:44

6 A. Yes.

7 Q. Sheriff, you weren't hiding that the Human Smuggling Unit
8 continued to do interdictions, correct?

9 A. Hiding?

10 Q. Right.

11:11:04

11 A. No.

12 Q. You weren't -- you weren't -- you were continuing to talk
13 about it to the press, correct?

14 A. Yes.

15 Q. The Human Smuggling Unit continued to generate paperwork as
16 a result of their operations, correct?

11:11:12

17 A. Yes.

18 Q. You didn't direct anyone not to talk about it, correct?

19 A. No.

20 Q. With all this press releases and documents that were
21 generated, were you willfully violating the Court's order, the
22 preliminary injunction?

11:11:31

23 A. No.

24 Q. Were you knowingly violating the Court's preliminary
25 injunction?

11:11:48

1 A. No.

2 Q. There is a statement that was read to you that said, "If I
3 had to do it all over again under the same circumstances, I'd
4 do it again." Do you recall that?

5 A. Yes.

11:12:04

6 Q. What did you mean by that?

7 A. I believe it had to do with an operation in Guadalupe,
8 could have been 2008. Had information about violence, so we
9 did a crime suppression operation.

10 In the meantime, we had the authority under 287(g) to
11 enforce that type of law. We had two top officials from
12 Washington there doing this operation. We arrested about 45
13 people for different types of crimes, and six or seven were
14 here illegally that were booked in for those state charges, and
15 I believe two others we did not have any state law, so they
16 were turned over to ICE pursuant to our 287(g) authority.

11:12:26

11:13:02

17 But that operation had to do with violent crime --

18 Q. So --

19 A. -- and when the news media asked me I did say, I may have
20 been wrong, but I was talking about in that same circumstance
21 way back in those years where we had the authority, or we
22 always had the authority to go after those that commit crimes,
23 that I would have done it over again.

11:13:27

24 Q. In 2008 you had the authority to do what you did pursuant
25 to the laws, correct?

11:13:48

1 A. Yes.

2 Q. Okay. So now, knowing what you know regarding the
3 preliminary injunction, knowing what you know now, would you
4 have done the exact same things, activities, from 2011 to 2013
5 that your Maricopa County Sheriff's Office was conducting
6 interdictions and either holding people or turning them over to
7 ICE or Border Patrol?

11:14:08

8 A. We still would do the crime operations, but as far as that
9 part of it is yes, you're right, we would not do it now.

10 Q. You wouldn't do it the same.

11:14:29

11 A. No.

12 Q. You know that that violates the preliminary injunction?

13 A. Yes.

14 MS. IAFRATE: I have nothing further.

15 THE COURT: Mr. Walker.

11:14:44

16 MR. WALKER: Your Honor, I was up to the wee hours of
17 this morning and came to the conclu- -- two conclusions.

18 Number one, that it just was not possible for me to prepare
19 competently to examine this witness at this time. And I've
20 spoken to all counsel. I'd like to take the Court up on its
21 offer to be able to recall the witness and potentially take his
22 deposition in the interim.

11:15:02

23 THE COURT: Well, Mr. Walker, I -- I think that I will
24 at least allow you to make that request. I'm not going to rule
25 on it now. And the reason why is, as I think I've indicated

11:15:25

EXAMINATION

BY THE COURT:

Q. I do appreciate that you have indicated that you have respect for the federal court and for judges. I assume that I was intended to be included among that group when you said it?

11:30:26

A. Yes, sir.

Q. I want you to know that while we have disagreements, and I think some sharp ones in the past, I respect you in your position as the sheriff of Maricopa County, and recognize that you have been elected by the people of this county and I want to afford you that same respect.

11:30:41

So I'm going to have some questions, some of them may be difficult to answer, and I'm going to certainly let your attorneys participate if they have concerns, but I'm going to try to ask you my questions with respect, and I hope you'll afford me the same in response.

11:31:01

A. Yes, sir.

Q. Now, we began by discussing -- or you began your testimony -- I can't even remember whether it was this morning or last night -- by discussing the scope of the matters that you had -- in which you admit that you're in civil contempt. And there were actually three matters that I specified in my order to show cause.

11:31:15

Do you remember those? Do you remember what they were? Three separate matters that related to civil contempt.

11:31:30

1 Q. Was that under the SID, Special Investigations Division?

2 A. I'm not sure.

3 Q. Does the Special Investigations Division do investigations
4 with confidential informants? Are they -- do they handle
5 confidential informants?

11:53:00

6 A. Yes.

7 Q. And does the captain of SID have to approve investigations
8 involving confidential informants in terms of payments to them?

9 A. Your Honor, I don't know how far down it goes for that
10 authority, whether it's a lieutenant or the captain or deputy
11 chief.

11:53:17

12 Q. Okay. But somebody in the SID has to approve payments that
13 are made to confidential informants?

14 A. Yes.

15 Q. Are there any exceptions to that policy?

11:53:30

16 A. I'm not sure.

17 Q. Well, do you remember that right at the time -- and it was,
18 as I recollect, in June of 2014 -- that you named

19 Captain Bailey to become captain over the Professional
20 Standards Bureau instead of the Special Investigations

11:53:50

21 Division, that there was a newspaper article, maybe a blog,
22 that was published by somebody named Stephen Lemons?

23 A. I know who he is.

24 Q. Do you usually read the articles that he writes about you?

25 A. Once in a while, yes.

11:54:08

1 Q. Do you remember him writing about investigations that he
2 had sources were telling him your office was doing out of
3 Seattle involving confidential informants?

4 A. He may -- I may remember that, yes.

5 Q. Let me just give you -- I've copied the article. Let me 11:54:26
6 give it to you and see if it helps to refresh your recollection
7 that you've read it.

8 Do you want to distribute that?

9 (Off-the-record discussion between the Court and the
10 clerk.) 11:54:57

11 THE COURT: Hand it to the attorneys.

12 THE WITNESS: It's a long article.

13 BY THE COURT:

14 Q. It is a long article, and if you need to take the time to
15 read it, you can do that. But I'm just asking if you have any 11:55:44
16 recollection, now having me give it to you, if you ever read
17 it.

18 I will tell you that in the article he says he talked
19 to you about some of the materials in the article, and that's
20 kind of on the last page, if that will help you. 11:56:01

21 (Pause in proceedings.)

22 BY THE COURT:

23 Q. Do you remember reading this article?

24 A. I believe I read it.

25 Q. And I just want to ask you some questions about the article 11:56:53

1 and some of the things that it states.

2 I recognize, and I believe Mr. Lemons does in the
3 article, too, that he can't personally vouch for everything
4 that the article says, it's just what he's had some sources
5 tell him.

11:57:10

6 So I don't mean to suggest one way or another that the
7 article is accurate. I just want to ask about some of the
8 things that it says so I understand them. And I trust that
9 you'll tell me the truth, and you understand you're under oath,
10 correct?

11:57:24

11 Did you detail some of your personnel to conduct
12 investigations that resulted in their frequent trips and stays
13 in the Washington state area beginning in 2013 or 2014?

14 A. We had a couple investigations -- investigators go up
15 there, yes.

11:57:40

16 Q. And who were those investigators?

17 A. I think it was Zullo and Brian Mackiewicz.

18 Q. And Mackiewicz is --

19 A. A detective.

20 Q. Is he in your -- is he assigned to you personally, your
21 risk detail?

11:57:52

22 A. Well, we had a lot of threats on me and --

23 Q. I understand that. Is that generally his assignment, to
24 protect you and assess risks that come against you?

25 A. Yes.

11:58:09

1 Q. And so you were aware when he was gone to the Seattle area?

2 A. Yes.

3 Q. And what about -- I think there's a Mr. Anglin mentioned in
4 the article. Was he also an officer that was assigned to go to
5 Seattle as well?

11:58:23

6 A. I think for a short period of time he did.

7 Q. And is zoo -- did you say Zulu? Zullo. Is he a posse
8 member?

9 A. Yes.

10 Q. And did you pay funds from Maricopa County for Mr. Zullo to
11 go to the Washington area?

11:58:33

12 A. Yes.

13 Q. And then I assume you paid Anglin and Mackiewicz their
14 travel costs?

15 A. We don't pay for Zullo, but --

11:58:47

16 Q. But you paid Mackiewicz and Anglin.

17 A. Yes.

18 Q. And did you also hire a consultant in the Washington state
19 area to help you with this investigation or investigations that
20 Mackiewicz and Zullo were working with?

11:59:02

21 A. Not that I know of. May have.

22 Q. Did you have a confidential informant in the Washington
23 area that they were working with?

24 A. Yes.

25 Q. And does the article accurately identify who that

11:59:12

1 confidential informant was?

2 It says the name is Dennis Montgomery. Is that the
3 confidential informant?

4 A. Yes.

5 Q. And so when Mr. Montgomery was a confidential informant, he 11:59:38
6 was some sort of a computer consultant?

7 A. Yes.

8 Q. And as a confidential informant, his fees would have to be
9 paid, or approved, if in fact it was before the transfer of
10 Captain Bailey, his fees would have had to have been approved 11:59:57
11 by Captain Bailey, or any payments to him would have had to
12 have been approved by Captain Bailey?

13 A. I'm not sure at the time period, Your Honor.

14 Q. Now, the article says that you were personally conducting
15 these investigations and personally aware of them. 12:00:14

16 Were you?

17 A. Well, on a certain issue I was.

18 Q. And what issue was that?

19 A. It was the president's birth certificate.

20 Q. Okay. So you were -- Mr. Montgomery was doing research 12:00:25
21 into the president's birth certificate. Did Mr. Montgomery
22 ever tell you -- or, well, did you ever use Mr. Montgomery to
23 investigate anything about the Department of Justice?

24 A. I don't believe that Montgomery was involved in the birth
25 certificate. It was other violations that he was looking into. 12:00:46

1 Q. And what were those?

2 A. Had to do with computer tampering and also bank fraud, that
3 type of thing.

4 Q. Did you ever -- you see that the article says that what
5 Montgomery was actually doing was investigating me.

12:01:12

6 You see that that's what the article says?

7 A. It's not true.

8 Q. All right. Are you aware that I've ever been investigated
9 by anyone?

10 A. You investigated?

12:01:24

11 Q. Yes.

12 A. No. No.

13 Q. Any of my activities?

14 A. No.

15 Q. Any of my family members?

12:01:31

16 A. That have been investigated?

17 Q. Yes.

18 A. Not by our office.

19 Q. Are you aware of anybody who's investigated any of my
20 family members by any -- any office. Or anybody.

12:01:52

21 A. I believe there was an issue, but once again, it wasn't my
22 office.

23 Q. Well, whose office was it?

24 A. It was an outside investigator not hired by us.

25 Q. Who hired the outside investigator?

12:02:12

1 A. Could have been counsel.

2 Q. "Counsel" meaning your counsel?

3 A. Yes.

4 Q. And would that have been Mr. Casey or Ms. Iafrate?

5 A. I believe it would have been Mr. Casey.

12:02:30

6 Q. And who did he hire?

7 A. It was the counsel.

8 Q. I'm sorry?

9 A. Mr. Casey.

10 Q. Mr. Casey. Who did Mr. Casey hire?

12:02:42

11 A. Pardon?

12 Q. Who did Mr. Casey hire? To investigate me or a member of
13 my family, or members of my family.

14 A. We weren't investigating you, Your Honor.

15 Q. Well, who were you investigating?

12:02:56

16 A. We were investigating some comments that came to our
17 attention.

18 Q. Okay. And how did they come to your attention?

19 A. Through e-mail.

20 Q. And do you know who the author of the e-mail was?

12:03:10

21 A. I don't have the name right now.

22 Q. Okay. Let me ask, in his article Mr. Lemons indicates --
23 well, let me get -- let me get this clear. Your testimony is
24 that Mr. Mackiewicz, Mr. Anglin, Mr. Zullo, never were involved
25 in any investigation of the Department of Justice or of me, is

12:03:33

1 that correct?

2 A. Not -- no, not of you.

3 Q. Well, were they involved in an investigation of the
4 Department of Justice?

5 A. I'm not sure.

12:03:55

6 Q. Were they trying to determine whether the Department of
7 Justice had contacted me in any way?

8 A. I'm not sure about that.

9 Q. You're not sure about that?

10 A. No.

12:04:09

11 Q. And would Mr. Montgomery have been involved in assisting
12 them to determine whether the Department of Justice had
13 contacted me in any way?

14 A. No. I believe there was information about many judges
15 being infiltrated or wiretaps and that type of thing. That's
16 what the informer said that right now we don't have much
17 confidence in.

12:04:29

18 Q. Well, who was the informer and what did the informer say?

19 A. We're speaking about Montgomery.

20 Q. All right. Montgomery said that judges had been
21 infiltrated?

12:04:50

22 A. That many judges -- if I recall, that they're wire -- their
23 phones were tapped, e-mails, that type of thing.

24 Q. By the Department of Justice?

25 A. By someone.

12:05:08

1 Q. And so Mr. Montgomery proposed to -- who did he propose to
2 at the MCSO that the DOJ was inappropriately --

3 I assume it was of interest to you if they were
4 wiretapping my phone, among others?

5 A. Yes. And mine, too.

12:05:33

6 Q. And yours, too.

7 And so were you conducting this investigation?

8 A. No.

9 Q. Who was in your department?

10 A. This is Zullo and I think Mackiewicz.

12:05:40

11 Q. What rank does Mackiewicz have?

12 A. He's a detective.

13 Q. Who did he report to about this investigation?

14 A. I think he and Zullo worked together.

15 Q. And who did they report to?

12:05:52

16 A. And Jerry Sheridan.

17 Q. They reported to Deputy Chief Sheridan?

18 A. At one time, but let me just say that the information
19 we're -- we've been getting is the informer's not very viable.

20 Q. Well, I understand that, I think the article itself says,
21 that you became aware after a considerable amount of time that
22 the reporter was giving you junk. Is that fair to say?

12:06:11

23 A. Yes.

24 Q. Or the informer was giving you junk?

25 A. Yes.

12:06:24

1 Q. How much money did you spend on the informant?

2 A. I don't recall.

3 Q. How much money did you spend on the investigation?

4 A. I don't have the figures.

5 Q. Do you -- does the -- I guess I want to straighten some
6 things out to make sure that I understand them.

12:06:35

7 It's typical that confidential informants get control
8 numbers?

9 A. I believe so.

10 Q. And that they are maintained in a confidential informant
11 log and monitored by the Special Investigations Division
12 commander or his designee?

12:06:56

13 A. I believe so.

14 Q. And that for the time that this matter was going to be
15 investigated, or was being investigated, that would have been
16 Captain Bailey, correct?

12:07:14

17 A. I'm still not sure on the time -- time frame, or whether he
18 knew about it.

19 Q. Well, I will tell you that the article suggests that the
20 investigation began in October of 2013. And Mr. Lemons, in the
21 article, says that as of January 2015 he kept making document
22 requests to the MCSO, and the MCSO continued to say this is an
23 ongoing investigation, we're not going to give you anything.

12:07:29

24 So is this investigation still ongoing, or have you
25 determined pretty much that the informant was unreliable and

12:07:51

1 it's not worth proceeding?

2 A. Well, it's almost finished.

3 Q. I'm sorry?

4 A. It's almost finished on -- especially on his reliability.

5 Q. All right. Are you investigating him now?

12:08:06

6 A. I'm not sure.

7 Q. Well, I want to understand exactly what it is that

8 Mr. Mont -- your understanding of what it is that

9 Mr. Montgomery told you DOJ was doing that you were

10 investigating.

12:08:23

11 A. Once again, he seemed to indicate that someone was

12 penetrating in the e-mails of our local attorneys and others,

13 judges, that type of thing, which we can't prove.

14 Q. All right. And was I one of those judges?

15 A. I think you were one of the judges.

12:08:50

16 Q. And were you concerned then that that might be affecting my

17 judgment or neutrality in this lawsuit?

18 A. No.

19 Q. Who else was named by Mr. Montgomery as being targets of

20 this DOJ investigation?

12:09:08

21 A. I believe the -- our local law firm, the attorneys working

22 for us on the Department of Justice lawsuit.

23 Q. Who else?

24 A. You mean other judges around -- I don't remember.

25 Q. Anybody that Mr. Montgomery said that -- that the DOJ was

12:09:34

1 bugging their phones, or otherwise intruding into their private
2 communications.

3 A. Well, I know I was.

4 Q. You were one. Your law firm was one.

5 A. Jerry Sheridan, I believe. And there's other local
6 officials.

7 Q. And I was?

8 A. You -- yes.

9 Q. Did you keep any of the materials that Mr. Montgomery has
10 provided you?

11 A. I don't have them.

12 Q. Who does?

13 A. I believe Zullo does.

14 Q. And is he subject to your control --

15 A. Yes.

16 Q. -- as a member of your posse?

17 A. Yes.

18 Q. I'm going to direct you that you tell Mr. Zullo that he
19 keep all those documents. All right?

20 A. He what?

21 Q. He keep and maintain all of those documents.

22 A. Yes.

23 Q. I'm going to direct you that nothing pertaining to any of
24 this investigation be destroyed, including confidential

25 informant numbers.

12:09:53

12:10:03

12:10:13

12:10:22

12:10:32

1 Do you understand that direction?

2 A. Yes.

3 Q. Who else was aware of these investigations within the MCSO?

4 A. I'm not sure. Because of the sensitivity, we were trying
5 to keep it quiet. 12:10:51

6 Q. Now, I think in addition to the investigation that may have
7 involved me and my phone or any contact or tapping by the
8 Department of Justice, you indicated that there were
9 investigations made into members of my family.

10 Did you indicate that? 12:11:08

11 A. That had nothing to do with Montgomery.

12 Q. What did it have to do with?

13 A. I believe there was a, as I say, e-mail that came to me.

14 Q. And do you still have that e-mail?

15 A. We may have it, yes. 12:11:28

16 Q. I'm going to direct you to keep that e-mail.

17 What did the e-mail say, to the best of your
18 recollection?

19 A. I think it mentioned that Judge Snow wanted to do
20 everything to make sure I'm not elected. 12:11:43

21 Q. Do you recall who the author of that e-mail was?

22 A. I believe it was someone named Grissom.

23 Q. Grissom?

24 A. Grissom.

25 Q. Okay. And how did this person purport to know that? 12:12:02

1 A. The person met your wife in a restaurant, and she's the one
2 that made those comments.

3 Q. According to whatever Mr. Grissom said.

4 A. There was other witnesses, yes.

5 Q. Okay. And so you turned that over to your counsel and
6 counsel hired a private investigator, and what did the
7 investigator do?

12:12:28

8 A. He investigated it.

9 Q. And what was the result of the investigation?

10 A. Results were that he confirmed that your wife was in that
11 restaurant and con -- I guess talked to the witnesses, three or
12 four, that confirm that remark was made.

12:12:37

13 Q. All right. And do you have any materials pertaining to
14 that investigation?

15 A. We should have.

12:12:59

16 Q. Okay. Will you save those as well?

17 A. Yes.

18 Q. All right. Thank you.

19 Who has told you that the information that
20 Mr. Montgomery provide -- or how is it that you've come to
21 conclude that the information you were getting from
22 Mr. Montgomery is not reliable?

12:13:08

23 A. I think the investigators, as time progressed, figured that
24 he may not be reliable.

25 Q. Did the MCSO also purchase computer equipment for

12:13:24

1 Mr. Montgomery or for the investigation?

2 A. That's possible.

3 Q. Well, I'm going to direct you, to the extent that any of
4 this material is in your control, that it be maintained.

5 Do you understand that direction?

12:13:45

6 A. Yes.

7 Q. Would Captain Bailey have been involved in any of these
8 investigations?

9 A. I don't believe so.

10 Q. But if he was the commander of Special Investigations
11 Division, he would have been aware of the investigations?

12:13:56

12 A. I'm not sure.

13 Q. The commander of the Special Investigations Division would
14 have to sign off on payments made to confidential informants?

15 A. Yes, normally.

12:14:14

16 Q. And would they have to sign off on payments made for
17 investigations in which confidential informants were involved?

18 A. I'm not sure if he would do it, or a lieutenant, or who
19 would do that.

20 Q. Who is currently the director of the Special Investigations
21 Division? Or the commander or the captain.

12:14:34

22 A. I can't re -- I can't remember his name. It's an Italian
23 name, but -- I know that Trombi is the top guy in charge of all
24 these elements.

25 Q. Will you make sure that everybody in your division that has

12:15:09

1 anything to do with any of this maintains all these records?

2 A. Yes.

3 THE COURT: I think, Sheriff, for the time being,
4 those are my questions. It's probably time for us to break for
5 lunch, so could you be back in an hour? We'll have an hour
6 lunch break.

12:16:07

7 THE WITNESS: Yes, sir.

8 THE COURT: I appreciate your answers.

9 THE WITNESS: Thank you.

10 (Lunch recess taken.)

12:16:16

11 THE CLERK: All rise. Court is now in session.

12 THE COURT: Thank you. Please be seated.

13 You ready to proceed?

14 MS. WANG: Yes, Your Honor.

15 THE COURT: Sheriff, I just wanted to --

13:23:01

16 Oh, I'm sorry.

17 MS. IAFRATE: Yes, Your Honor.

18 THE COURT: I just wanted to reiterate some of the

19 things I said during my questioning of you to make sure

20 everybody was clear. I was told over lunch that posse funds

13:23:11

21 like Mr. Zullo -- Mr. Zullo's the head of one of your posses.

22 THE WITNESS: Yes.

23 THE COURT: Is it the Cold Case posse?

24 THE WITNESS: Yes.

25 THE COURT: I was told that you also have various

13:23:23

1 sources of funding within the MCSO, like the Cold Case posse
2 has its own funds. Is that possible?

3 THE WITNESS: No.

4 THE COURT: Okay. Do you know what the possible
5 funding sources were for the investigations that were related
6 to the Seattle operation?

13:23:34

7 When I say "operation," I mean the one involving
8 Mr. Montgomery and the investigations with Brian Mackiewicz and
9 Mr. Anglin.

10 THE WITNESS: I'm not sure if it was our RICO, which
11 is drugs seized -- I mean moneys seized from drug peddlers, or
12 our general funds.

13:24:00

13 THE COURT: Were there other possible funds that might
14 be involved that fund various like, for example, the Cold Case
15 posse?

13:24:14

16 THE WITNESS: They're independent 501(c) --

17 THE COURT: 501(c) (3).

18 THE WITNESS: -- and they raise their own money.

19 THE COURT: All right. And you don't have any control
20 over those funds?

13:24:24

21 THE WITNESS: No.

22 THE COURT: What about asset forfeiture funds, would
23 any asset forfeiture funds have been involved in funding this
24 operation?

25 THE WITNESS: I don't know where their funding came

13:24:35

1 from.

2 THE COURT: Well, the point is this, and I think I
3 made it clear, but I just want to make sure that I've made it
4 clear, to the extent that you have any control over any funding
5 records, over any reports, over any communications, over any 13:24:45
6 overtime records, travel documentation, any e-mails of any and
7 all people involved in the threat assessment unit or anywhere
8 else, any communications from and to Montgomery, any computers
9 or phones, cell phones or other information that in any way is
10 relevant or related to this investigation, I want you to direct 13:25:18
11 your people to put a hold on it immediately and preserve it.
12 And that includes any documentation or numbers that would
13 relate to Mr. Montgomery's confidential status.

14 You understand that?

15 THE WITNESS: Your Honor, are you referring to this 13:25:39
16 investigation with the monitors and --

17 THE COURT: No, no. I'm referring to the
18 investigation that Mr. Montgomery was undertaking with
19 Mr. Mackiewicz, Mr. Anglin, Mr. Zullo, anybody else from your
20 staff, anybody else from the MCSO, or anyone else from the 13:26:00
21 posse. I want all records that in any way relate to it, all
22 electronic data or anything else, or the financing, funding of
23 that operation, all phone records, e-mails, reports, I want it
24 all preserved.

25 And I think I will send the monitor to begin taking 13:26:18

1 possession of those records and we'll do it confidentially,
2 imminently. But I don't want in the interim any of those
3 records lost, inadvertently or otherwise.

4 You understand what I'm saying?

5 THE WITNESS: Yes.

13:26:32

6 THE COURT: And you'll so direct your people?

7 THE WITNESS: Yes.

8 THE COURT: All right. Thank you, sir.

9 Mr. Young?

10 MR. YOUNG: No further questions, Your Honor.

13:26:39

11 THE COURT: Ms. Iafrate?

12 MS. IAFRATE: Nothing, Your Honor.

13 MR. WALKER: Subject to my earlier reservation,
14 nothing, Your Honor.

15 MR. COMO: I have no questions, Your Honor.

13:26:47

16 THE COURT: You may step down, Sheriff. Thank you.

17 Next witness.

18 MS. WANG: Your Honor, plaintiffs call Joseph Sousa.

19 THE CLERK: Can you please state and spell your first
20 and last name for the record.

13:27:18

21 THE WITNESS: Joseph Sousa, J-o-s-e-p-h, S-o-u-s-a.

22 (Joseph Sousa was duly sworn as a witness.)

23 THE CLERK: Can you please take our witness stand.

24 THE COURT: Please, Ms. Wang.

25 MS. WANG: Thank you, Your Honor.

13:28:03

Exhibit 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

MANUEL de JESUS ORTEGA MELENDRES, et. al.

Plaintiff(s)/Petitioner(s),

vs.

CASE NO: CV-07-2513-PHX-GMS

JOSEPH M. ARPAIO, et. al.

Defendant(s)/Respondent(s)

Application of Attorney For Admission To Practice Pro Hac
Vice Pursuant to LRCiv 83.1(b)(2)**NOTICE: \$35.00 APPLICATION FEE REQUIRED!**

I, Jonathon Alden Moseley, hereby apply to the Court under LRCiv 83.1(b)(2) for pro hac vice admission to appear and practice in this action on behalf of Dennis L. Montgomery, witness and proposed intervenor.

City and State of Principal Residence: Lake Placid, Florida, temporarily working in Springfield, Virginia
 Firm Name: Freedom Watch, Inc.
 Address: 2020 Pennsylvania Ave, N.W., Suite 345 Suite: 15-287
 City: Washington State: D.C. Zip: 20006
 Firm/Business Phone: (310) 595-0800
 Firm Fax Phone: (703) 788-0449 E-mail Address: Contact@JonMoseley.com

I am admitted to practice before the following courts. (attach additional sheets if necessary)

TITLE OF COURT	DATE OF ADMISSION	IN GOOD STANDING?
Supreme Court of Virginia, including all Virginia courts	06/01/1997	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No*
U.S. District Court for the Eastern District of Virginia	08/20/2010	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No*
		<input type="checkbox"/> Yes <input type="checkbox"/> No*

* Explain:

(An **Original** Certificate of Good Standing from a **FEDERAL BAR** in which an applicant has been admitted dated no more than 45 days prior to submission of this application is required.)

I have concurrently, or within 1 year of this application, made *pro hac vice* applications to this Court in the following actions (attach additional sheets if necessary):

Case Number	Title of Action	Date Granted or Denied*

* Explain:

ALL APPLICANTS ARE REQUIRED TO ANSWER THE FOLLOWING QUESTIONS.

If you answer YES to either of the following questions, please explain all circumstances on a separate page.

Are you currently the subject of a disciplinary investigation or proceeding by any Bar or Court? ☐ Yes ☒ No
 Have you ever been disbarred from practice in any Court? ☐ Yes ☒ No

I declare under penalty of perjury that the foregoing is true and correct; that I am not a student of, nor am I regularly employed, engaged in business, professional or other activities in the State of Arizona; and that I am not currently suspended, disbarred or subject to disciplinary proceedings in any court. I certify that I have read and will subscribe to the Standards for Professional Conduct, will comply with the Rules of Practice of the United States District Court for the District of Arizona ("Local Rules"), and will subscribe to receive court notices as required by LRCiv 83.1(c).

Jonathon A. Moseley

Date

May 2, 2015

Signature of Applicant

Fee Receipt #

(Rev. 04/12)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

Motion and Order for Admission Pro Hac Vice

Division	Brownsville	Case Number	Case No. 1:14-cv-254
STATE OF TEXAS, et al.			
versus			
UNITED STATES OF AMERICA, et al.			

United States District Court
Southern District of Texas
FILED

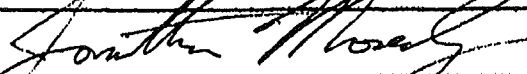
JAN 15 2015

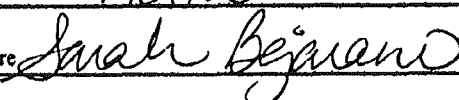
David J. Bradley, Clerk of Court

Lawyer's Name Firm Street City & Zip Code Telephone & Email Licensed: State & Number Federal Bar & Number	Jonathon A. Moseley, Esq. Freedom Watch, Inc. 2020 Pennsylvania Avenue N.W., Suite 345 Washington, D.C. 20006 Virginia State Bar #41058 U.S. District Court for the Eastern District of Virginia
---	---

Name of party applicant seeks to appear for:	Amicus Curiae, Sheriff Joe Arpaio
--	-----------------------------------

Has applicant been sanctioned by any bar association or court? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
On a separate sheet for each sanction, please supply the full particulars.

Dated: 1/14/2015	Signed: 
------------------	--

The state bar reports that the applicant's status is: Active	
Dated: 1-15-15	Clerk's signature: 

United States District Court
Southern District of Texas
ENTERED

Order

This lawyer is admitted *pro hac vice*.

JAN 16 2015

Dated: 1/16/15

David J. Bradley, Clerk of Court


United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

United States District Court
Southern District of Texas
ENTERED

JAN 21 2015

STATE OF TEXAS, *et al.*

Plaintiffs,

v.

UNITED STATES OF AMERICA, *et al.*

Defendants

David J. Bradley, Clerk of Court

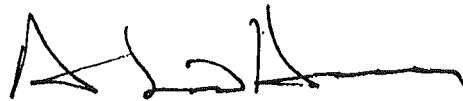
Case No. 1:14-cv-254

**ORDER GRANTING MOTION FOR LEAVE TO PARTICIPATE AS
AMICI CURIAE IN SUPPORT OF PLAINTIFFS BY SHERIFF JOE ARPAIO**

Before the Court is a Motion for Leave to Participate as *Amicus Curiae* in Support of Plaintiffs by Sheriff Joe Arpaio, elected Sheriff of Maricopa County, Arizona.

The Court hereby grants leave for the aforementioned movant to participate as *Amicus Curiae* and file a brief in support of Plaintiffs' motion for a preliminary injunction which the Court may consider in assisting the Court evaluating the issues in the case.

Signed this 21st day of July, 2015.



Hon. Andrew S. Hanen
United States District Judge

Exhibit 3

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Of Counsel

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

MANUEL de JESUS ORTEGA MELENDRES, on
behalf of himself and all others similarly
situated; *et al.*

Plaintiff,

v.

JOSEPH M. ARPAIO, in his individual
And official capacity as Sheriff of Maricopa
County, Arizona; *et al.*

Defendants.

DENNIS L. MONTGOMERY

Intervenor.

Civil Action No.
CV-07-2513-PHX-GMS

DENNIS L. MONTGOMERY'S MOTION FOR INTERVENTION OF RIGHT

Pursuant to Federal Rules of Civil Procedure ("FRCP") Rule 24(a)(2) Dennis L.

Montgomery hereby moves to intervene as of right in order, as further explained in his companion

Memorandum of Law and also his proposed motions.

1 Dennis Montgomery intervenes to demand a return of his documents, records, work product
2 and proprietary interests; to move to strike false information about him from the record, which is
3 also irrelevant to the proceedings, to disqualify the Honorable Murray Snow and file a demand for
4 the immediate transfer of the case to a different judge pursuant to 28 U.S. Code § 144, and to move
5 for a halt to the inquiry.
6

7 Dated: May 7, 2015

Respectfully submitted,
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21
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28

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2015, I served this document by U.S. Mail to:

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Phoenix, AZ 85003-2160

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Of Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

MANUEL de JESUS ORTEGA MELENDRES, on
behalf of himself and all others similarly
situated; *et al.*

Plaintiff,

v.

JOSEPH M. ARPAIO, in his individual
And official capacity as Sheriff of Maricopa
County, Arizona; *et al.*

Defendants.

DENNIS L. MONTGOMERY

Intervenor.

Civil Action No.
CV-07-2513-PHX-GMS

**INTERVENOR DENNIS L. MONTGOMERY'S MEMORANDUM OF LAW IN SUPPORT
OF MOTION FOR INTERVENTION OF RIGHT**

I. INTRODUCTION

Pursuant to Federal Rules of Civil Procedure ("FRCP") Rule 24(a)(2) Dennis L.

Montgomery hereby moves to intervene as of right in order to protect and vindicate his interests in being improperly investigated and having his documents, records, work product and intellectual property seized by the Court without any privilege review or protections for his propriety interests. Dennis Montgomery intervenes to demand a return of his documents, records, work product and intellectual property; to move to strike false information about him from the record, which is also irrelevant to the proceedings, to file a demand for recusal or disqualification and the immediate transfer of the case to a different judge pursuant to 28 U.S. Code § 144, and move for a halt to the inquiry.

II. GOVERNING LAW

Federal Rules of Civil Procedure ("FRCP") Rule 24 governs intervention by additional parties in existing litigation in the federal courts: ¹

Rule 24. Intervention

(a) INTERVENTION OF RIGHT. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a federal statute;

or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) PERMISSIVE INTERVENTION.

(1) *In General*. On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by a federal statute;

or

(B) has a claim or defense that shares with the main action a common question of law or fact.

¹ It does not appear that the Local Rules of the U.S. District Court for the District of Arizona present any additional rules or requirements for intervention.

1 (2) *By a Government Officer or Agency.* On timely motion, the court
 2 may permit a federal or state governmental officer or agency to intervene if
 a party's claim or defense is based on:

3 (A) a statute or executive order administered by the officer or
 agency; or

4 (B) any regulation, order, requirement, or agreement issued or
 made under the statute or executive order.

5 (3) *Delay or Prejudice.* In exercising its discretion, the court must
 6 consider whether the intervention will unduly delay or prejudice the
 adjudication of the original parties' rights.

7 (c) NOTICE AND PLEADING REQUIRED. A motion to intervene must be served
 8 on the parties as provided in Rule 5. The motion must state the grounds for
 intervention and be accompanied by a pleading that sets out the claim or
 9 defense for which intervention is sought.

10 **III. STATEMENT OF FACTS RELEVANT TO MOTION**

11 There has been a dramatic change of this case, so that the case is now about entirely
 12 different albeit irrelevant, personal issues concerning the presiding judge and his wife in a new
 13 phase than when it began. The Court entered a final order on October 2, 2013. This is, in effect,
 14 now an entirely different case which is being used for improper purposes.

15 On or about April 23-24, 2015, the Honorable G. Murray Snow embarked on an inquiry of
 16 Dennis L. Montgomery extensively inquiring about the alleged dealings with the Maricopa County
 17 Sheriff's Office ("MCSO") and Cold Case Posse entirely unrelated to this litigation, seizing by his
 18 unprecedented and improper court order Dennis Montgomery's documents, records, work product,
 19 and intellectual property, and even demanding documents about and concerning Dennis
 20 Montgomery's attorney and a federal judge in the District of Columbia.

21 Mr. Montgomery's physical personal property and intellectual property has been affected
 22 and taken. Montgomery's proprietary interests have been invaded along with his attorney work
 23 product subject to privilege and other privileged material, documents, and/or information.
 24 Montgomery was deprived of the right to review the documents to protect privileged information
 25 and/or documents and proprietary information.
 26
 27
 28

1 Judge Snow explicitly relied upon the so-called reporting from The Phoenix New Times, a
2 disreputable and dishonest internet publication with a far-left political agenda which hates anyone
3 remotely associated with Sheriff Joe Arpaio or his office.

4 As a result, the substance of the allegations which the inquiry is pursuing, based on the so-
5 called reporting of The Phoenix New Times, clearly includes making profoundly significant
6 determinations about Dennis Montgomery's honesty, legitimacy, career, work, and profession.

7 IV. ARGUMENT

8 A. Dennis Montgomery Has a Direct Interest in the Property and Transaction

9 Dennis Montgomery has a vested right to intervene. Pursuant to FRCP Rule 24(a)(2)
10 Dennis Montgomery claims an interest in property or transaction that is the subject of the action.
11 The Court has seized his physical property and intellectual property, and attorney-client and work
12 product privileges have been violated and trashed. Montgomery seeks to file motions to quash and
13 for the return of his documents, property, and intellectual property.

14 B. Dennis Montgomery Will Be Impaired or Impeded

15 Dennis Montgomery has a vested right to intervene as a matter of law and right. Pursuant to
16 FRCP Rule 24(a)(2) Dennis Montgomery is so situated that disposing of the action will as a
17 practical matter impair or impede his ability to protect his interest. The inquiry now launched is
18 obviously intended to and will make decisions about Dennis Montgomery and his work, as well as
19 harm his legal rights and interests.

20 C. The Motion is Timely

21 Intervenor's motion is timely. Although the litigation has been going on for years, the case
22 has entered a new and different phase only in late April of 2015. The case only began to involve
23 Dennis Montgomery in April 2015. Therefore, Intervenor files this motion timely as soon as his
24 interests became involved in the case by the actions of Judge Snow.
25
26
27
28

1 **V. CONCLUSION**

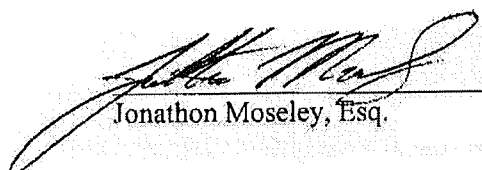
2 Dennis L. Montgomery has a vested right to intervene pursuant to FRCP Rule 24(a)(2) and
3 should be granted the status of Intervenor for the purpose of seeking a transfer of the case to another
4 judge, demanding return of his documents and intellectual property including by quashing the
5 orders for their production, striking libelous information from the court record that have nothing to
6 do with the ongoing contempt proceedings. Mr. Montgomery is also filing a motion to disqualify
7 Judge Snow on the basis of his unethical judicial misconduct, which has resulted in him pursuing
8 his own personal family interests and agenda, and egregiously violating attorney-client privileges
9 and Mr. Montgomery's work product and intellectual property rights.
10

11 Dated: May 7, 2015

Respectfully submitted,

12
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28 Attorney for Plaintiff

CERTIFICATE OF SERVICE

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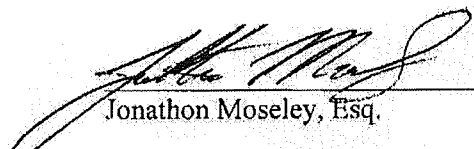
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27
28
(Pro Hac Vice Application Filed)

Exhibit 4

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Attorney for Intervenor

Of Counsel

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

MANUEL de JESUS ORTEGA
MELENDRES,
on behalf of himself and all others similarly
situated; *et al.*

Plaintiff,

v.

JOSEPH M. ARPAIO, in his individual
And official capacity as Sheriff of Maricopa
County, Arizona; *et al.*

Defendants

DENNIS L. MONTGOMERY

Intervenor

Civil Action No.
CV-07-2513-PHX-GMS

**MOTION FOR RECONSIDERATION OF MOTION FOR ADMITTANCE PRO HAC VICE
OF JONATHON A. MOSELEY AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

Jonathon A. Moseley, Movant for admittance *pro hac vice* on behalf of Dennis L.
Montgomery, and Dennis L. Montgomery, hereby move this Court to reconsider and reverse its
decision, made without prejudice, concerning Moseley's and Montgomery's motion for Jonathon
Moseley to be admitted *pro hac vice* to represent Dennis Montgomery in this case.

1 **MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR RECONSIDERATION**

2 **I. INTRODUCTION AND STATEMENT OF RELEVANT FACTS**

3 Pursuant to Rule 59(e), Rule 60(b)(6), and Rule 60(d)(1) of the Federal Rules of Civil
4 Procedure and the continuing jurisdiction over and inherent authority of the Court over the matter,
5 Movant asks for reconsideration of the Court's Order of May 14, 2015, based on errors of fact and
6 law.
7

8 On May 14, 2015, the Court denied the motion of Dennis Montgomery and Jonathon
9 Moseley for Jonathon Moseley to be admitted *pro hac vice* to represent Dennis Montgomery. The
10 Court cited an alleged but unidentified conflict of interest as the basis for denying the *pro hac vice*
11 admittance.
12

13 Merely reciting, as the Court apparently did, that Jonathon Moseley and Larry Klayman, the
14 head of Freedom Watch, also represent Sheriff Arpaio in another case does not establish a conflict
15 of interest. Thus, the Court made a reversible error of fact and law.

16 To the contrary, responding to the Court's questions on May 8, 2015, Movant filed a
17 "Clarification of Motion for Admittance *Pro Hac Vice* of Jonathon A. Moseley," dated May 13,
18 2015. Movant stated to the Court in that filing that

19 Neither Dennis L. Montgomery nor his counsel are adverse to Sheriff Arpaio, his
20 deputies, the Cold Case Posse, or MCSO **in any respect**, particularly since this
21 case involves a contempt proceeding over allegations of profiling illegal
immigrants. [Dkt. #1080].

22 No party has formally filed any pleading asserting, with established facts, that the Movant as
23 counsel for Dennis Montgomery has any conflict of interest. As a result, the record does not
24 contain any basis for not admitting Movant *pro hac vice*. There are no allegations nor facts
25 whatsoever in the record to establish any conflict of interest, particularly since Freedom Watch's
26 representation of Sheriff Arpaio in other cases, which is to enjoin President Obama's executive
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1 actions granting amnesty to over 5 million illegal immigrants, that this does not show any conflict
2 of interest. (*Arpaio v. Obama*, No. 14-5325 (D.C. Cir.); *Texas v. Untied States*, No. 14-254 (S.D.
3 Tex)). To the contrary, it clearly shows a unity of interests.

4 In the matter before this Court, Movant and Freedom Watch do not intend to challenge any
5 testimony by Sheriff Arpaio, his deputies, the Maricopa County Sheriff's Office (MCSO), or the
6 Cold Case Posse. Also, it is Movant and Freedom Watch's expressed position that the issue of the
7 "credibility" of Dennis Montgomery is not properly before this Court, so there is no need to take
8 any adverse position to prior testimony here. And, Mr. Montgomery does not intend to do so in any
9 event.
10

11 In addition, Dennis Montgomery is not seeking to take any position with regard any other
12 issues remaining in the post-judgment proceedings in this case or the testimony involving the
13 allegations of contempt of the Court's injunction brought by the Plaintiffs.

14 Dennis Montgomery seeks to intervene in this case only because his intellectual property,
15 documents, data and work have been illegally seized by the Court in disregard of his work-product
16 and attorney-client privilege and his proprietary rights. The U.S. District Court for the District of
17 Nevada has already ruled that (1) the data and intellectual property belongs to Dennis Montgomery,
18 (2) none of the data or information is classified, (3) the U.S. Government was required to return all
19 of the data and information to Dennis Montgomery, and (4) the U.S. Government deceived that
20 Court in falsely claiming that the data, information, and/or intellectual property did not belong to
21 Dennis Montgomery and/or was classified. See *Dennis Montgomery and the Montgomery Family*
22 *Trust v. eTreppid Technologies, LLC, Warren Trepp and the U.S. Department of Defense*, Case
23 Nos. 3:06-CV-00056-PMP-VPC and 3:06-CV-00145-PMP-VPC, Order, Judge Philip M. Pro,
24 March 19,2007, and *In the Mater of the Search of: The Residence Located at 12720 Buckthorne*
25 *Lane, Reno, Nevada, and Storage Units 136, 140, 141, 142 and 143, Double R Storage, 888*
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1 *Madestro Drive, Reno, Nevada*, Case Nos. 3:06-CV-0263-PMP-VPC and 3:06-MJ-00023-VPC,
2 Order, Magistrate Judge Valerie P. Cooke, November 28, 2006. These Orders are *res judicata* and
3 are now final.

4 Accordingly, the Court abused its discretion in not allowing Dennis Montgomery to appear
5 *pro hac vice* by his chosen counsel.

6 **II. RIGHT TO COUNSEL OF ONE’S OWN CHOOSING**

7 A person is entitled to his choice of counsel, including an attorney appearing *pro hac vice*:

8 “A defendant's right to the counsel of his choice includes the right to have an out-of-state
9 lawyer admitted *pro hac vice*.” *United States v. Lillie*, 989 F.2d 1054, 1056 (9th Cir. 1993); *see also*
10 *Panzardi-Alvarez v. United States*, 879 F.2d 975, 980 (1st Cir. 1989)(“[A] decision denying a *pro*
11 *hac vice* admission necessarily implicates constitutional concerns.”), *cert. denied*, 493 U.S. 1082,
12 110 S. Ct. 1140, 107 L. Ed. 2d 1045 (1990).

13 “It is hardly necessary to say that, the right to counsel being conceded, a defendant should
14 be afforded a fair opportunity to secure counsel of his own choice.” *Powell v. Alabama*, 287 U.S.
15 45, 53, 53 S.Ct. 55, 58, 77 L.Ed. 158 (1932). The right to retain counsel of choice stems from a
16 defendant's right to decide what kind of defense he wishes to present. *United States v. Nichols*, 841
17 F.2d 1485, 1502 (10th Cir.1988).

18 “Attorneys are not fungible” and often “the most important decision a defendant makes in
19 shaping his defense is his selection of an attorney.” *United States v. Laura*, 607 F.2d 52, 56 (3d
20 Cir.1979); *Nichols*, 841 F.2d at 1502. *See also Chandler v. Fretag*, 348 U.S. 3, 10, 75 S.Ct. 1, 5,
21 99 L.Ed. 4 (1954) (“a defendant must be given a reasonable opportunity to employ and consult with
22 counsel; otherwise the right to be heard by counsel would be of little worth”); *Glasser v. United*
23 *States*, 315 U.S. 60, 75, 62 S.Ct. 457, 467, 86 L.Ed. 680 (1942) (“[defendant] wished the benefit of
24 the undivided assistance of counsel of his own choice. We think that such a desire on the part of an
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1 accused should be respected.”)

2 When a defendant is financially able to retain counsel, the choice of counsel rests in his
3 hands, not with the state. *United States v. Richardson*, 894 F.2d 492, 496 (1st Cir.1990); *Wilson v.*
4 *Mintzes*, 761 F.2d 275, 280 (6th Cir.1985). A defendant's right to retain counsel of his choice
5 therefore represents “ ‘a right of constitutional dimension’ ” *United States v. Cunningham*, 672 F.2d
6 1064, 1070 (2d Cir.1982) (citing *United States v. Wisniewski*, 478 F.2d 274, 285 (2d Cir.1973)), the
7 denial of which may rise to the level of a constitutional violation. *Birt v. Montgomery*, 725 F.2d
8 587, 592 (11th Cir.) (*en banc*), cert. denied, 469 U.S. 874, 105 S.Ct. 232, 83 L.Ed.2d 161 (1984);
9 *Wilson*, 761 F.2d at 278-79.

11 Dennis Montgomery has a right to choose those attorneys whom he believes will be
12 knowledgeable enough about his circumstances to represent him effectively and meaningfully. This
13 is his Sixth Amendment right.

14 **III. JUDGE MUST RECUSE HIMSELF EVEN APART FROM THE MOTIONS TO** 15 **DISQUALIFY AND INTERVENE**

16 It is obvious that the only reason that this Court has not admitted Dennis Montgomery’s
17 chosen attorney *pro hac vice* is for it to avoid ruling upon the motion for recusal or disqualification
18 of The Honorable G. Murray Snow from the remaining alleged ongoing contempt proceeding.
19 However, even in the absence of any motion, the Code of Conduct for United States Judges and 28
20 U.S.C. § 455 require Judge Snow, *sua sponte*, to recuse himself or be disqualified from the case.
21 *See* Motions to Disqualify and Intervene attached at Docket Entries 1057, 1067.

23 As reported by Karen and Dale Grissom and their son Scott, Judge Snow’s wife declared
24 that Judge Snow has a personal bias against Sheriff Joe Arpaio and “**will do anything to get**
25 **[Arpaio] out of office.**” As Karen Morris Grissom communicated to Sheriff Arpaio closest in time
26 through a message over Facebook, attached as Exhibit 1:
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1 Judge Snow I know his wife and I talked with her one day she
2 recognized me from our childhood she told me that her husband
3 hates u and will do anything to get u out of office. This has
4 bothered me since last year when I saw her.

5 Neither Judge Snow nor his wife have denied the statement or sought to explain it. To the
6 contrary, the statements by Judge Snow's wife were confirmed by interviews by Don Vogel in
7 October 2013. *See* Exhibit 2, attached. More recently, in interviews with the media, Karen and
8 Dale Grissom again confirmed Judge Snow's wife's statements. *See*, Exhibit 3, attached.

9 As set forth in Canon 2(B) and Canon 3(C)(1) of the Code of Conduct for United States
10 Judges and 28 U.S.C. § 455(a), Judge Snow's impartiality may reasonably be questioned, because
11 the Judge has a personal interest in the statements about himself by his own wife and in running an
12 inquiry about investigations of his own wife and himself, and also, according to Professor Rotunda,
13 because the transcript indicates Judge Snow investigated matters on his own outside of the
14 evidentiary hearing. *See* Motion to Disqualify at Docket Entry 1067.

15 Pursuant to 28 U.S.C. § 455(b)(1) Judge Snow must recuse himself or be disqualified
16 because he has personal knowledge of disputed evidentiary facts concerning the proceeding, and he
17 and his wife are material witnesses who, if this matter continues any longer, will to be called
18 themselves as witnesses by one or more of the parties. Judge Snow has undoubtedly already spoken
19 to his wife about the prejudicial admission she made about the judge wanting to destroy Sheriff
20 Arpaio's reelection chances. Judge Snow has also admitted conducting his own investigations
21 outside of court, without any knowledge of the parties. Judge Snow has thus admittedly cast himself
22 as the U.S. Attorney, the judge, the jury and as the final arbiter of fact, on serious matters involving
23 himself and his wife. Therefore, as Judge Snow has personal knowledge of the facts – and they are
24 not in dispute – he has thrust himself into being not just all of the above, but also a material witness
25 along with his wife. This is untenable and highly unethical if Judge Snow continues on to preside on
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1 this case and issue orders, as he has even after being asked to recuse himself.

2 Under § 455(a) and Canons 2 and 3, a judge must recuse himself if a reasonable person with
3 knowledge of all the facts would conclude that his impartiality might reasonably be questioned."
4 *United States v. Nelson*, 718 F.2d 315, 321 (9th Cir. 1983). Disqualification or recusal is required
5 when there is even the appearance that the court's impartiality may be called into question, and
6 "could suggest, to an outside observer, such a 'high degree of favoritism or antagonism' to
7 defendants' position that 'fair judgment is impossible.'" *Liteky v. United States*, 510 U.S. 540, 555,
8 127 L. Ed. 2d 474, 114 S. Ct. 1147 (1994));
9

10 Here, the average citizen will assume that Judge Snow's wife and Judge Snow himself will
11 actually know if Judge Snow **hates Sheriff Arpaio** and "**will do anything to get [Arpaio] out of**
12 **office.**" If Judge Snow's wife is correct, then Judge Snow cannot preside over the case. The
13 Supreme Court has held that a violation of section 28 U.S.C. § 455(a) takes place even if the judge
14 is unaware of the circumstance that created the appearance of impropriety. *Liljeberg v. Health*
15 *Services Acquisition Corp.*, 486 U.S. 847 (1988).
16

17 The U.S. Courts of Appeals for the First, Fifth, Sixth, Tenth, and Eleventh Circuits have said
18 that close questions should be decided in favor of recusal. *See Republic of Pan. v. American*
19 *Tobacco Co.*, 217 F.3d 343, 347 (5th Cir. 2000) (citing *In re Chevron*, 121 F.3d 163, 165 (5th Cir.
20 1997)); *In re United States*, 158 F.3d 26, 30 (1st Cir. 1998); *Nichols v. Alley*, 71 F.3d 347, 352 (10th
21 Cir. 1995); *United States v. Dandy*, 998 F.2d 1344, 1349 (6th Cir. 1993); *United States v. Kelly*, 888
22 F.2d 732, 744 (11th Cir. 1989).
23

24 In short, Judge Snow must either recuse himself or be disqualified from this case, as he has
25 so infected the proceeding with his and his wife's personal interests, that he cannot continue under
26 any circumstances.
27
28

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Court should reconsider and reverse its decision and approve
3 the Movant's application for admission *pro hac vice*. To do otherwise would represent just another
4 attempt by the Court to sidestep and avoid having to rule on Movant's motions to intervene and
5 disqualification.

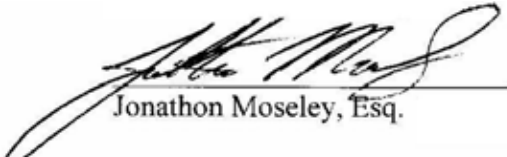
6 Plaintiff does not consent to this motion for reconsideration. Intervenor of Right
7 Montgomery did not receive a response from any other party when he asked for consent.
8

9 Dated: May 18, 2015

Respectfully submitted,

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Attorney for Dennis Montgomery

15 Of Counsel

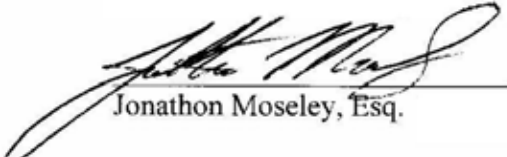
16 
17 Jonathon Moseley, Esq.

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21 Boca Raton, Florida 33433
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Attorney for Dennis Montgomery

22 **CERTIFICATE OF CONSULTATION**

23
24 On May 19, 2015, I inquired by email of all attorneys admitted in the case if they
25 consented to or objected to Intervenor Dennis Montgomery's or could resolve the dispute without
26 the need for court action. I received a reply from attorney Stanley Young notifying me that the
27 Plaintiffs in this case oppose the Intervenor's Motion for Reconsideration.
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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2015, I served the foregoing document by email and U.S. Mail on the following counsels' of record:

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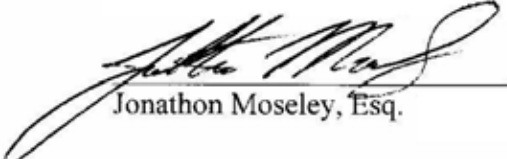
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22 (Service via Email)


Jonathon Moseley, Esq.

23 Virginia State Bar No. 41058

24 Attorney for Plaintiff
25 *(Pro Hac Vice Application Filed)*

Exhibit 1

.4k) Karen Morris Grissom - Messages

<https://www.facebook.com/AnvarioFans?ref=hl>

1.4k

194

Search for people, places and things



New! Add multiple photos, message friends of friends and more.

Hide

See What's I

Inbox (99+) Other

More

Karen Morris Grissom

New Message

Actions

Search

**Angela Blom**

2:30pm

Show her how much u love a... 1 new

**Amal Elsayy**

2:13pm

hi 1 new

**Jason McMullin**

2:05pm

Thank God for men like you h...1 new

**Karen Morris Grissom**

1:28pm

Judge Snow I know his wife a...

**Michael Homer Sr.**

1:20pm

I have such respect for you. ... 1 new

**David Pemberton**

1:19pm

you go Joe I don't care what ... 1 new

**Capрей Грек**

1:02am

В современной мировой эконо... 3 new

**Randy Pistorius**

Wed

?? 5 new

**Karl Douglas Allen**

Wed

The corrupted two party s... 3 new

**Eric Heinz**

Wed

You need to run for President...

**David Neiggenmann**

Wed

Hang tough sheriff ... you are...2 new

**Paul Gnau**

Wed

I am a retired Army Officer as...2 new

Conversation started today

**Karen Morris Grissom**

Judge Snow I know his wife and talked with her one day she recognized me from our childhood she told me that her husband hates u and will do anything to get u out of office. This has bothered me since last year when I saw her.

Sent from Phoenix

Write a reply...



Add Files



Add Photos

Press Enter to send

Reg

MELC198706

Exhibit 2

SCHMITT SCHNECK SMYTH CASEY & EVEN, P.C.

ATTORNEYS AT LAW

Timothy J. Casey
e-mail: timcasey@azbarristers.com

Client No.: 5754.030

November 6, 2013

**ATTORNEY-CLIENT PRIVILEGED/ATTORNEY WORK PRODUCT
PRIVILEGED/CONFIDENTIAL/NOT SUBJECT TO A PUBLIC RECORDS REQUEST**

VIA HAND-DELIVERY

Hon. Joseph M. Arpaio
MARICOPA COUNTY SHERIFF'S OFFICE
100 W. Washington St., Suite 1900
Phoenix, Arizona 85003-1812

*Re: Melendres v. Arpaio, CV2007-02513-PHX-GMS (United States District Court
for the District of Arizona)*


Dear Sheriff Arpaio:

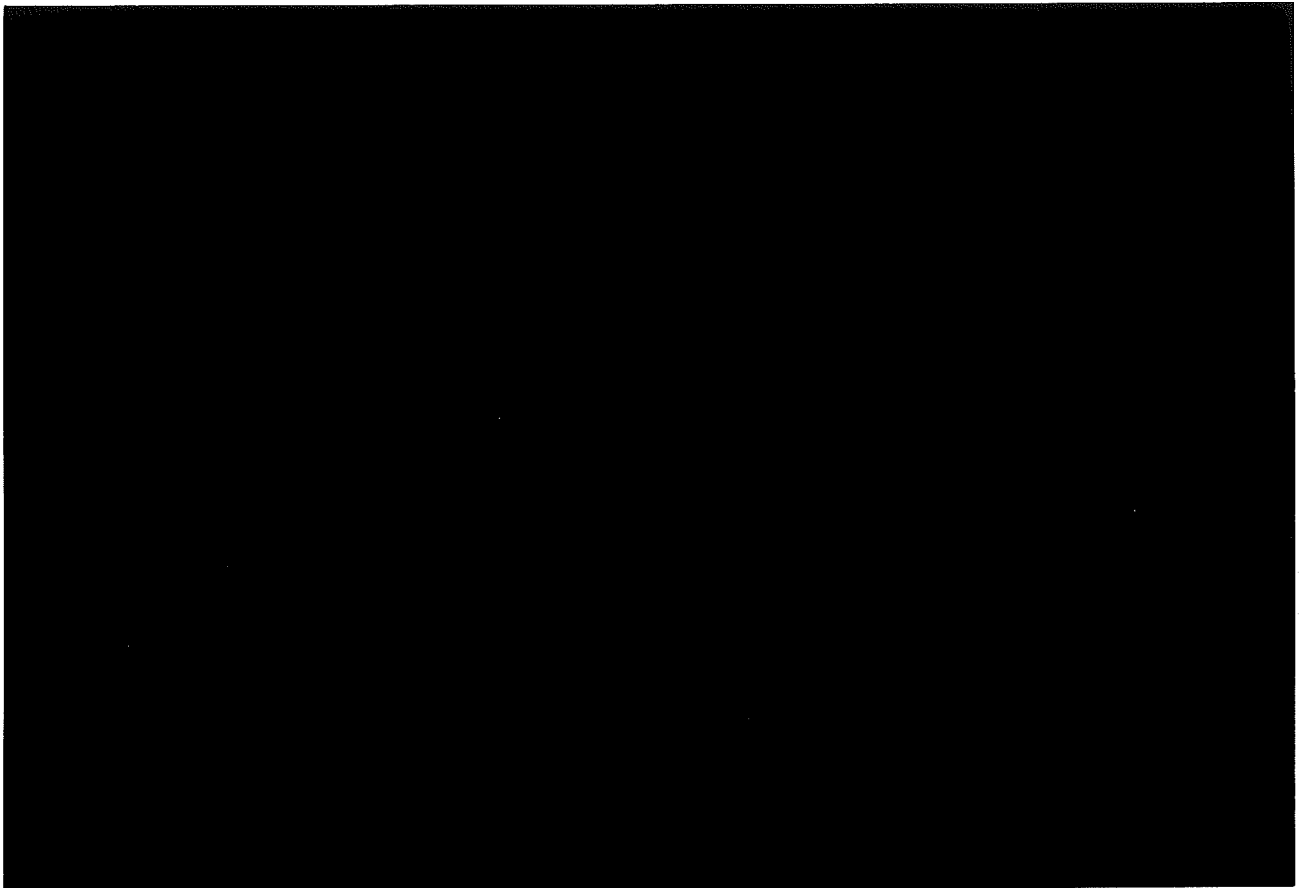
This letter provides the following information for your consideration: (1) the transcripts of private investigator Don Vogel regarding Karen Morris Grissom, Dale Eugene Grissom, and Scott Grissom; (2) the potential legal options available to you and the MCSO based on the Grissom investigatory materials; and (3) my analysis and recommendation to you and defendant MCSO regarding the Grissom information.

Upon my receipt later this week of the balance of Mr. Vogel's investigation report, I will forward the same to you immediately.

A. EXECUTIVE SUMMARY

Karen and Dale Grissom, husband and wife, had a chance encounter at a Tempe restaurant with a woman who was, in fact, Judge Murray Snow's wife. Mrs. Snow mistook Karen for her sister Irene. This encounter probably occurred in May of 2012. The encounter led to a conversation between Ms. Grissom and Mrs. Snow in the presence of Dale Grissom and Scott Grissom (the adult son of Karen and Dale Grissom). The fact that the woman was married to Judge Snow came up in the conversation. Mrs. Snow made a comment that Karen and Dale interpreted as hostile, negative, or unfavorable toward you. Karen Grissom reported to you the contact with Mrs. Snow 14 months after it happened. According to investigator Mr. Vogel, Karen and Dale Grissom present as sincere and truthful in their statements about what they believe they heard from Mrs. Snow ("the Grissom information").





B. BACKGROUND INFORMATION

To place this letter and its advice in context, some background information and key dates in this case are important to know.

1. Key Litigation Dates

The bench trial in this matter took place on July 19, July 24-26, July 31, August 1, and August 2, 2012 before the Honorable Murray Snow. The trial received daily local and national print and television media attention.

On May 24, 2013, the Court issued its Findings of Fact and Conclusions of Law (Dkt#579). The Court held that defendants' operations at issue violated the Plaintiff class's rights under the Fourth and Fourteenth Amendment to the United States Constitution. The Court, therefore, issued various permanent injunctions as set forth in that Order. The Court's Order received considerable local and national media attention.

On June 14, 2013, the Court held a status hearing with the parties. The parties advised the Court of their mutual desire to try to negotiate the terms of a consent decree to ensure defendants' compliance with the Court's injunction. The Court also indicated its current intention to implement certain elements into any final order (i.e., a monitor). This hearing was

covered extensively by the local and national media.

On August 16, 2013, the parties filed a Proposed Consent Decree that contained both terms to which the parties were able to reach agreement and terms on which they could not agree. The parties' proposal also received significant coverage in the media.

On or about August 21-22, 2013, a person named Karen Morris Grissom sent you a private message on your *Facebook* page purporting to have had a conversation in 2012 with Judge Snow's wife wherein Mrs. Snow reported that her husband, Judge Snow, did not like you and wanted you out of office.

On August 30, 2012, the Court held a hearing to discuss the terms agreed-upon by the parties and to hear oral argument on the terms the parties could not agree to. Argument was extensive. This hearing was covered by the media.

On October 2, 2013, the Court issued its Supplemental Permanent Injunction/Judgment Order (Dkt#606). Again, this Order was extensively covered in the media.

2. Karen Morris Grissom Message to Sheriff Arpaio

On or about August 21-22, 2013, Karen Morris Grissom sent the following private¹ message to you on your *Facebook* page:

"Karen Morris Grissom
Judge Snow I know his wife and talked with her one day she recognized me from our childhood she told me that her husband hates u and will do anything to get u out of office. This has bothered me since last year when I saw her."

(Lack of punctuation and spelling not changed).

Upon being advised of the foregoing and directed by your office to do so, I began to try to locate Ms. Grissom and interview her. I eventually sent a message to Ms. Grissom on her *Facebook* page and she called me on my cell telephone on August 28, 2013.

I spoke with Ms. Grissom around 3:00 p.m. on August 28, 2013 and explained the reason for contacting her. She advised that she and her husband (Dale) were driving to a job interview for her in Avondale (a teaching assistant position), she was experiencing poor cell phone connection, and we talked for a period of time and each time I lost the cell phone connection with her I called her back and she answered my call.

In short summary, and as you may recall from my prior oral report, Ms. Grissom, age 63, reported that she grew up in Yuma, Arizona, she went to the same church as Judge Snow's wife when she was a single woman, the judge's wife (as a single woman) was her piano teacher at one

¹ The message was private to you only. The message was not publicly posted. [REDACTED]

time, and something to the effect that the Judge's wife had a step-mother that was murdered in Yuma years ago.

Ms. Grissom advised that on an unknown date in 2012 she and her husband were eating at a *Some Burros* Mexican food restaurant at Baseline Road and Mill Road in Tempe, Arizona when a middle-aged woman came into the restaurant with a younger woman (they left a dog outside) and walked up to her and her husband. The woman asked Ms. Grissom if she was "Irene." Ms. Grissom believed that the date of this encounter was sometime before school started, so likely in July or August 2012. The woman was tall, thin, with short hair, and light brown-colored hair. Ms. Grissom said that she was not Irene, that Irene was her younger sister (age 55), and the woman began to tell Ms. Grissom that she was friends with Irene, that she (the woman) eventually went to BYU, was a teacher, she married a man that was now a federal judge, and her husband was ruling on a case involving Sheriff Arpaio. According to Ms. Grissom, the woman volunteered that her husband "wanted to burn the Sheriff because he did not like him."

Ms. Grissom advised that her husband, Dale, was present and heard the same exchange. *She did not remember the woman's first name, or her maiden name.* She was firm in what she claimed to have heard, and that she was speaking the truth. We discussed the reasons she waited over a year to disclose this information to you. Ms. Grissom advised that the woman's statement "bothered [her] at the time but eventually [she] needed to share this." Ms. Grissom stated that she viewed your public services very favorably but had never met or interacted with you.

I wanted to meet Ms. Grissom in person to evaluate her credibility, and obtain from her either a recorded statement or a statement under oath before a court reporter. Ms. Grissom advised that she was willing to meet with me in person, to provide a statement under oath, and that she would call me back after her job interview. She was adamant that she was telling the truth about what the judge's wife had said to her. She expressed no fear or reservation about telling the truth. Ms. Grissom again told me she would call me back after her job interview. The call ended.

As I reported initially to you and Chief Sheridan, Ms. Grissom came across telephonically as sincere and credible (despite not knowing the date of the encounter, the name of the woman, and the 12-13 month delay in reporting the incident) but I reserved final credibility judgment until I could meet her in person and speak with her in detail.

Ms. Grissom, however, did not call me back after the job interview. She also did not take my two separate telephone calls to her around 5:30 pm that same date (08/28/13).

Over the next four weeks, Ms. Grissom and I had no contact despite my occasional telephone call into her. It appeared to me that Ms. Grissom did not wish to talk further for whatever reason. I reported the same to you and your chiefs and further shared my prior historical experience with witnesses sometimes being willing to say certain things privately on a telephone call to an attorney and then decline further involvement or more formal documentation of the substance of the earlier communication. The absence of further contact from Ms. Grissom after-August 28, 2013 led me to personally conclude the matter was over and the information from Ms. Grissom lacked substance or merit.

3. Retention of Vogel Investigations

Pursuant to the conversation we had at your office on October 17, 2013 with Chief Sheridan regarding Ms. Grissom, I formally retained on October 23, 2013 investigator Don Vogel. The scope of Mr. Vogel's services were the following: (1) to try to interview Ms. Grissom (and possibly, her husband Dale Eugene Grissom) in order to learn the details of the communication from Ms. Grissom to your *Facebook* page that occurred on or about August 21-22, 2013, and to try to learn her motivations and timing for communicating with you; (2) to voluntarily obtain, if allowed, a recorded and/or sworn statement about the same from Ms. Grissom and/or her husband; (3) to provide me with Mr. Vogel's candid assessment of the credibility of Ms. Grissom (and possibly her husband); and (4) to provide me with Mr. Vogel's findings and any statement(s) from the Grissoms.

C. THE INFORMATION FROM INVESTIGATOR VOGEL

Attached for your review and file are the transcripts of Mr. Vogel's recorded interviews with the Grissoms.

1. Karen Grissom

Mr. Vogel showed up unannounced to the Grissom residence on Saturday, October 26, 2013. Dale Grissom was not at home. Karen Grissom, however, agreed to talk to Mr. Vogel and provide a recorded statement. The recorded statement lasted 20 minutes and 29 seconds.

Ms. Grissom is supportive of you and your law enforcement policies. While the precise details and context of the statement are contained on the attached transcript and audio, Ms. Grissom, her husband Dale, and their adult son, Scott, visited a *Some Burros* restaurant in Tempe Arizona on an unknown date in 2012. A woman entered the restaurant and approached Ms. Grissom and asked if she was Irene, the sister of Ms. Grissom. Irene and Karen apparently look very similar even though they differ in age by about a decade. The woman introduced herself as Sherry Snow; that name meant nothing to Ms. Grissom and the woman then mentioned her maiden name was Smock (or Smoch). The woman then described her background and that she was married to a federal judge. She presented as proud of her husband serving as a judge. Somehow the subject of Sheriff Arpaio surfaced in the conversation. The operative part of Ms. Grissom's statement is where Mrs. Snow is reported to have said to Ms. Grissom in response to a question by Ms. Grissom that "my husband does not like him [Arpaio] and wants him out of office."

Mr. Vogel's separate report will assesses Ms. Grissom's credibility from his perspective.

2. Dale Grissom

Mr. Vogel arranged to meet with Dale Grissom the following Monday.

Mr. Vogel interviewed and took a recorded statement of Dale Grissom on Monday, October 28, 2013. Mr. Grissom is age 64, but will turn 65 in a few weeks. The recorded

statement lasted 20 minutes and 41 seconds. Dale Grissom is supportive of you and your law enforcement policies. The details and context of the statement are contained on the attached transcript and audio. The operative part of Dale Grissom's statement is where Mrs. Snow is reported to have said in his presence to Karen Grissom sometime in late April or May of 2012 that **"my husband wants to get him [Arpaio] or wants him to go down"** or something negative to that effect.

Mr. Grissom does not remember the precise details about what was said. He does not recall Mrs. Snow ever reporting that her husband had actually said that her statements or views were those held by her husband but Mr. Grissom assumed that Mrs. Snow got her information or positions from her husband. While he does not remember the details of the conversation, and would be unable to personally identify Mrs. Snow in person or by photograph, he remembers that whatever precisely was said was negative toward you. Mr. Grissom also reported that there may have been two people with Mrs. Snow, a younger female and a younger male.

Mr. Grissom followed the *Melendres* case in the media stories as they were published or aired. Eventually, he learned that you and Judge Snow were "at odds."


Mr. Grissom was unaware of whether Karen Grissom had returned any of my telephone calls. He thought she had on an occasion but was uncertain.

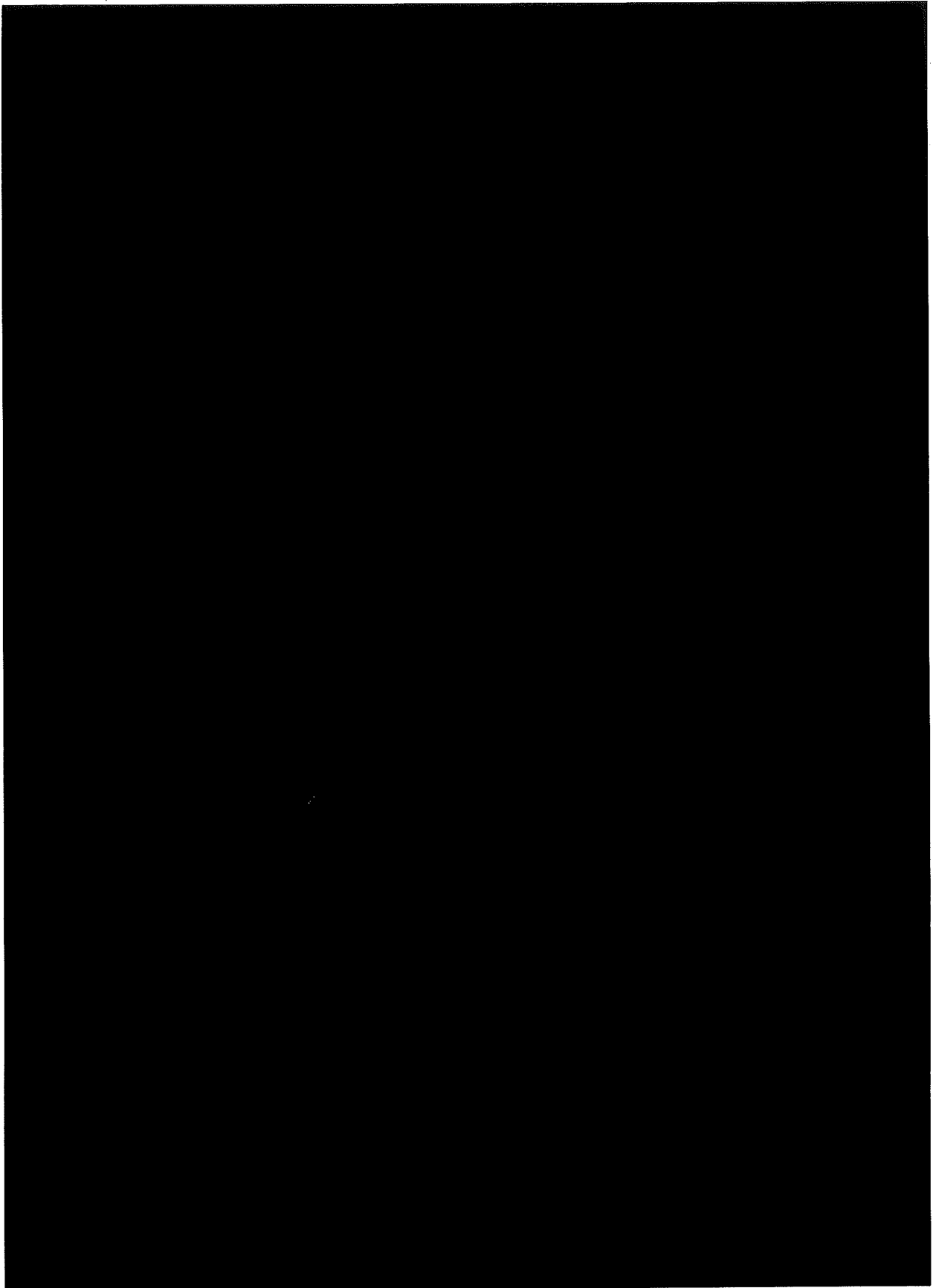
Mr. Vogel's separate report will assesses Mr. Grissom's credibility from his perspective.

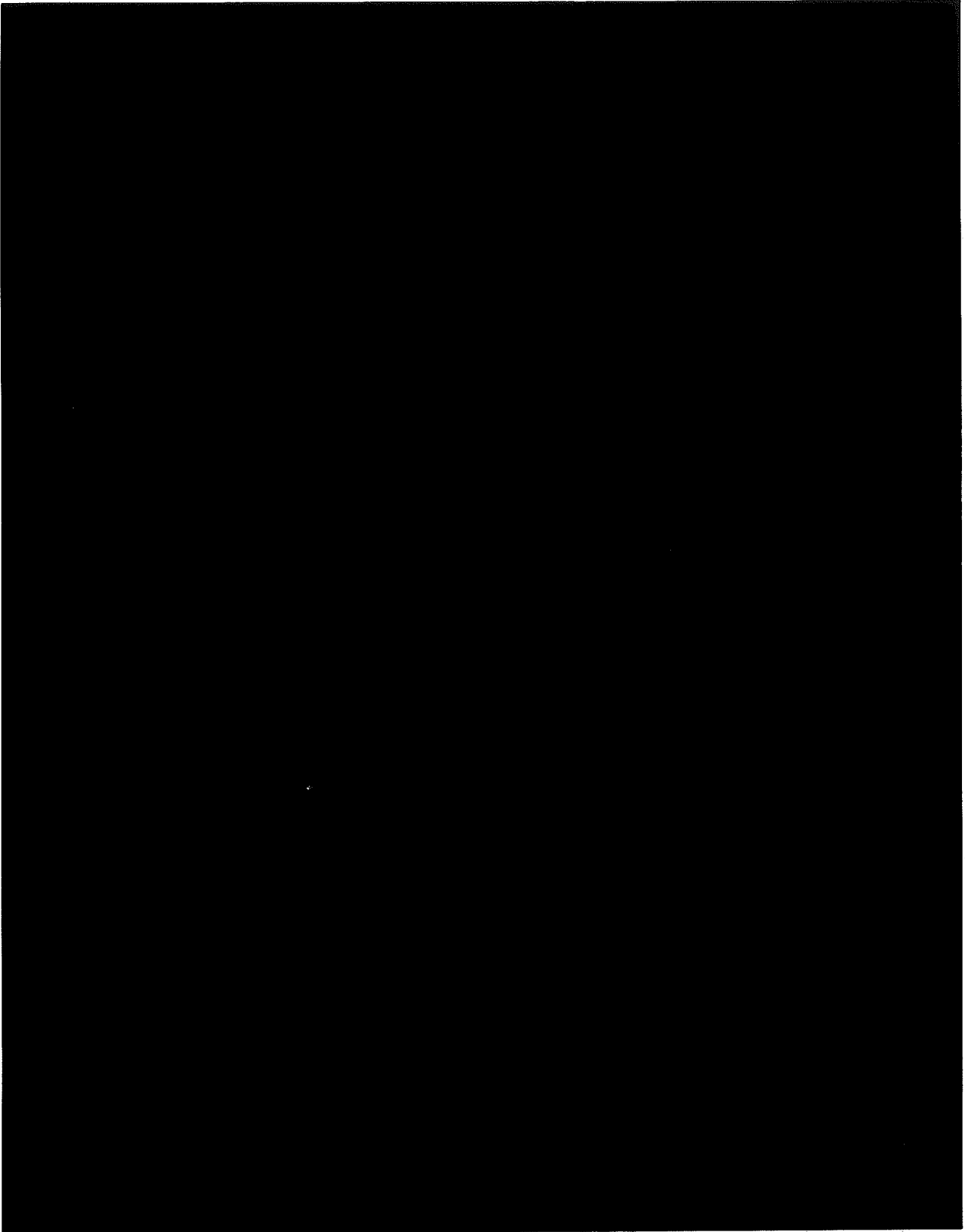
3. Scott Grissom

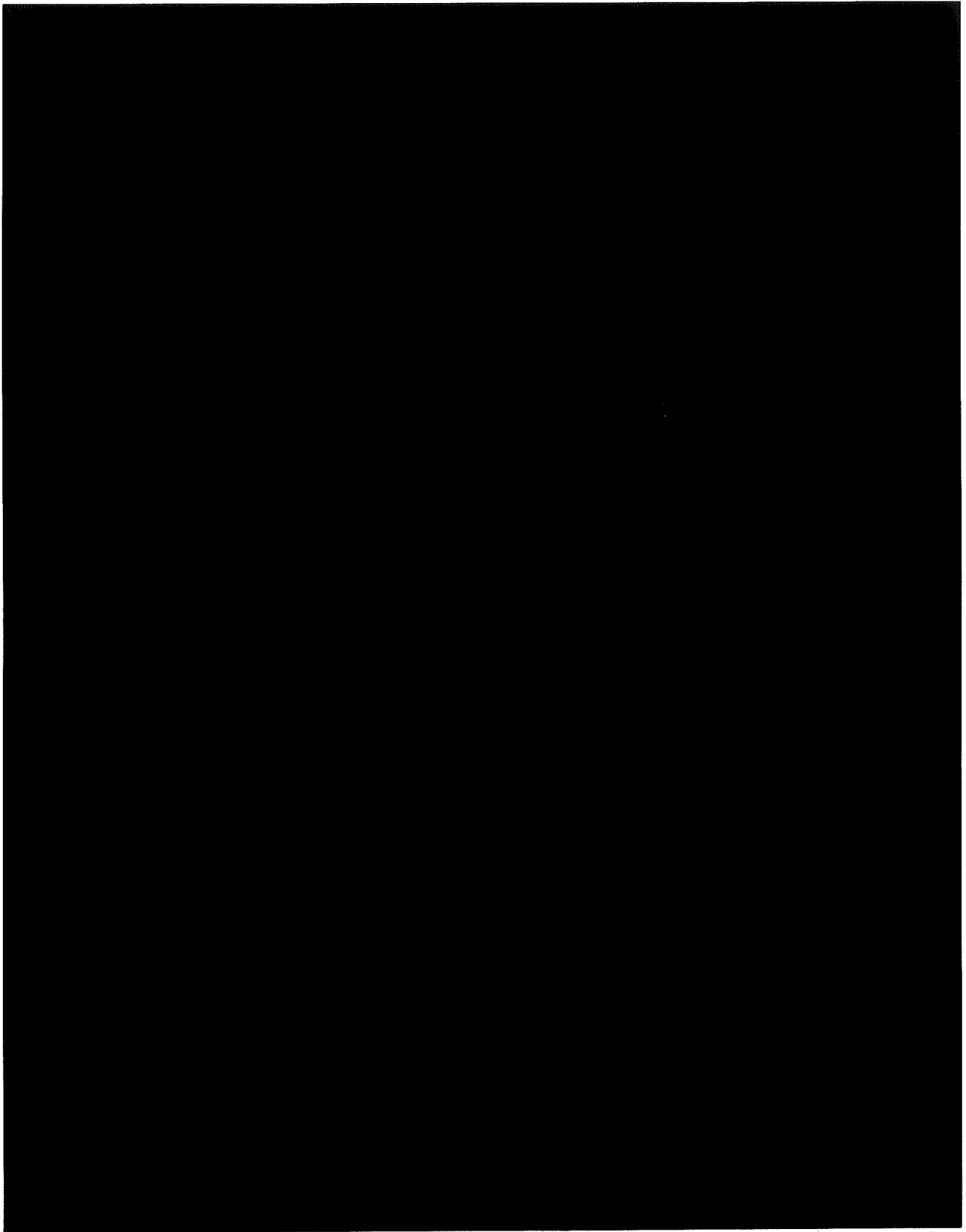
Mr. Vogel interviewed and took a recorded statement of Scott Grissom on Monday, October 28, 2013. Scott Grissom is the adult son (age 40) of Karen and Dale Grissom. He was visiting his parents and recalls eating a meal at *Some Burros*. The details and context of the statement are contained on the attached transcript and audio. The operative part of Scott Grissom's statement is where he remembers hearing, despite the noise in the restaurant, someone saying something to the effect of **"I'm going to get him or somebody's going to get him."** This occurred while his mother was speaking with an unknown woman. Scott Grissom remembers very little else about that date or the characteristics of the woman. He has no idea what or who the woman was talking about.

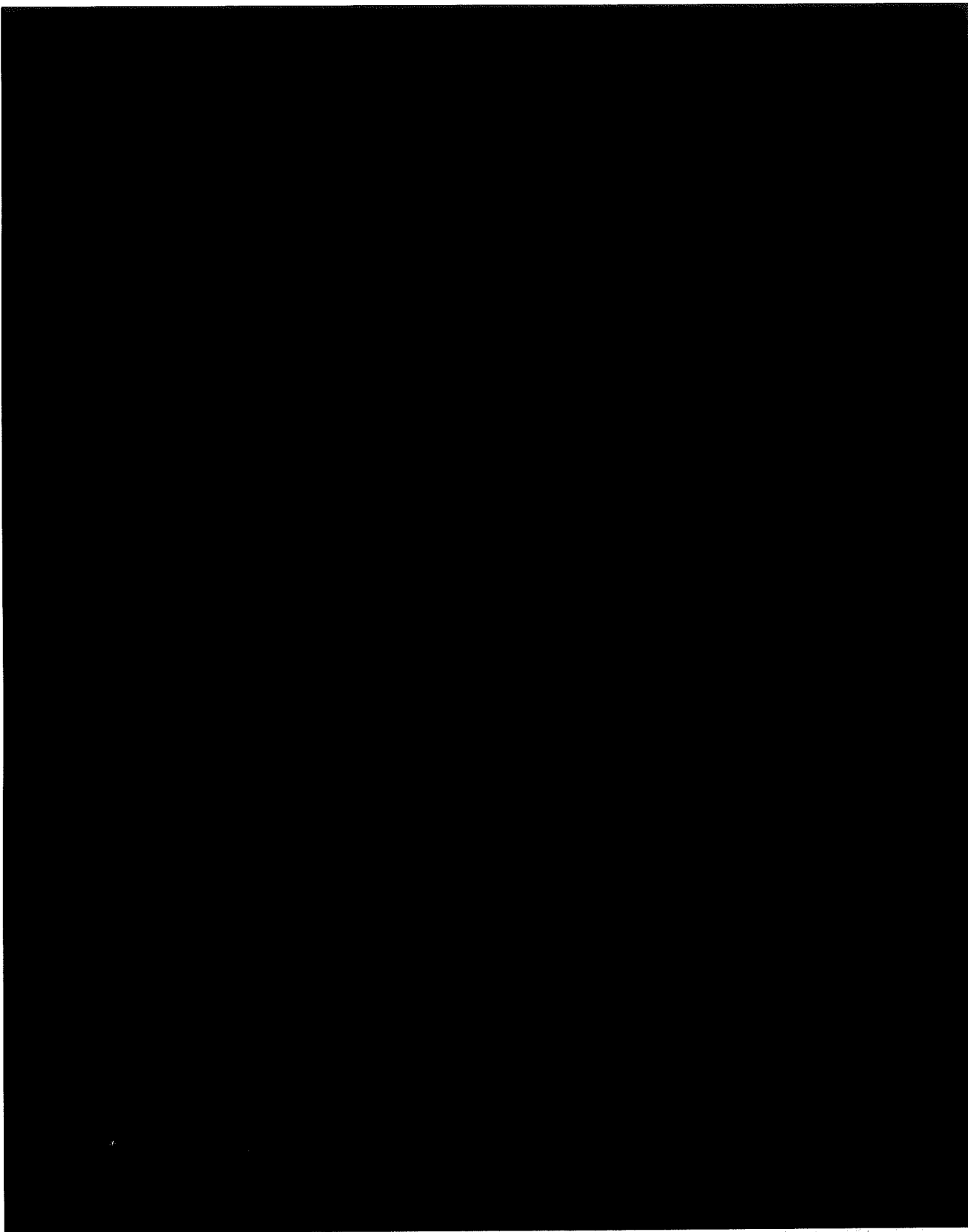
Mr. Vogel's separate report will assesses Scott Grissom's credibility from his perspective.

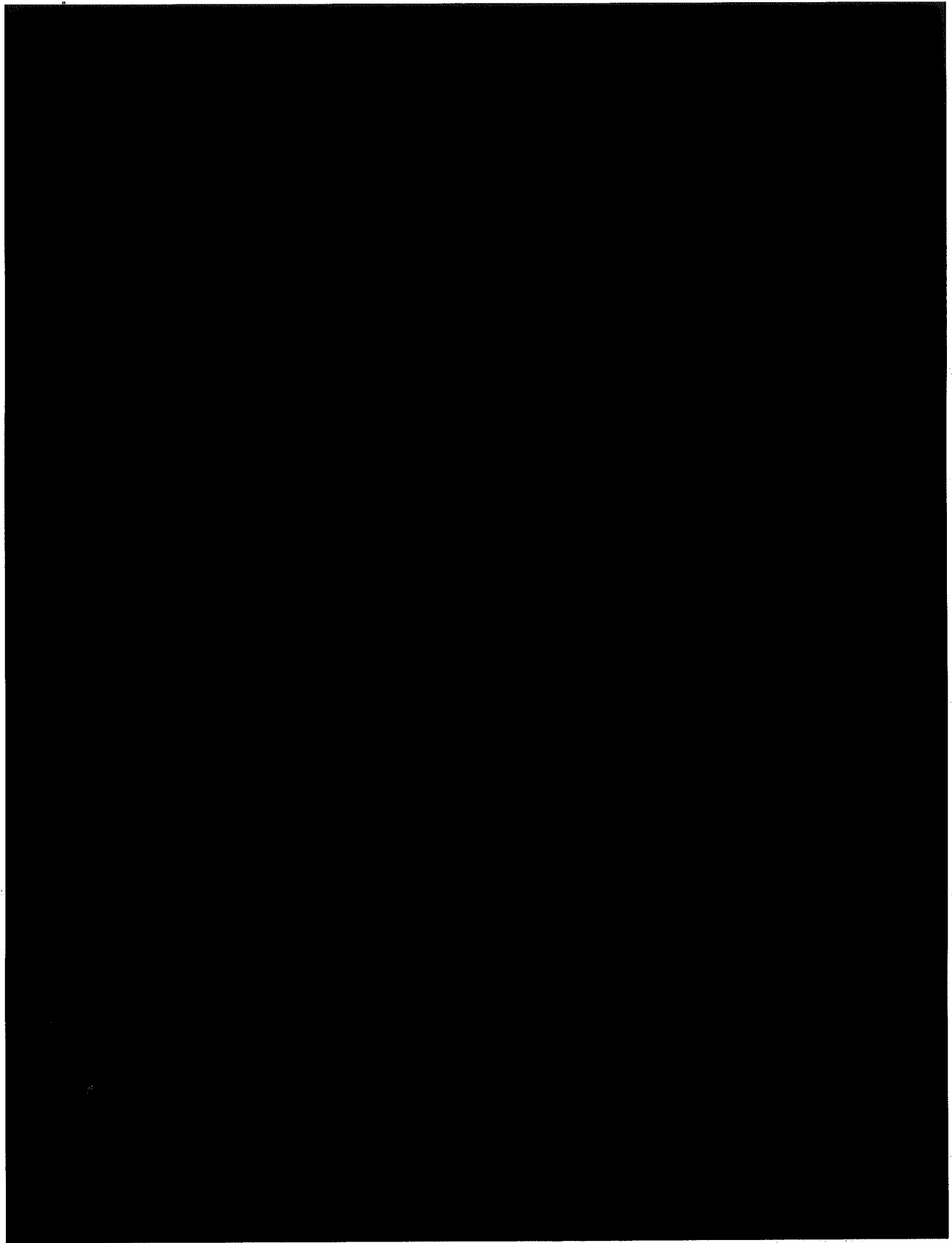


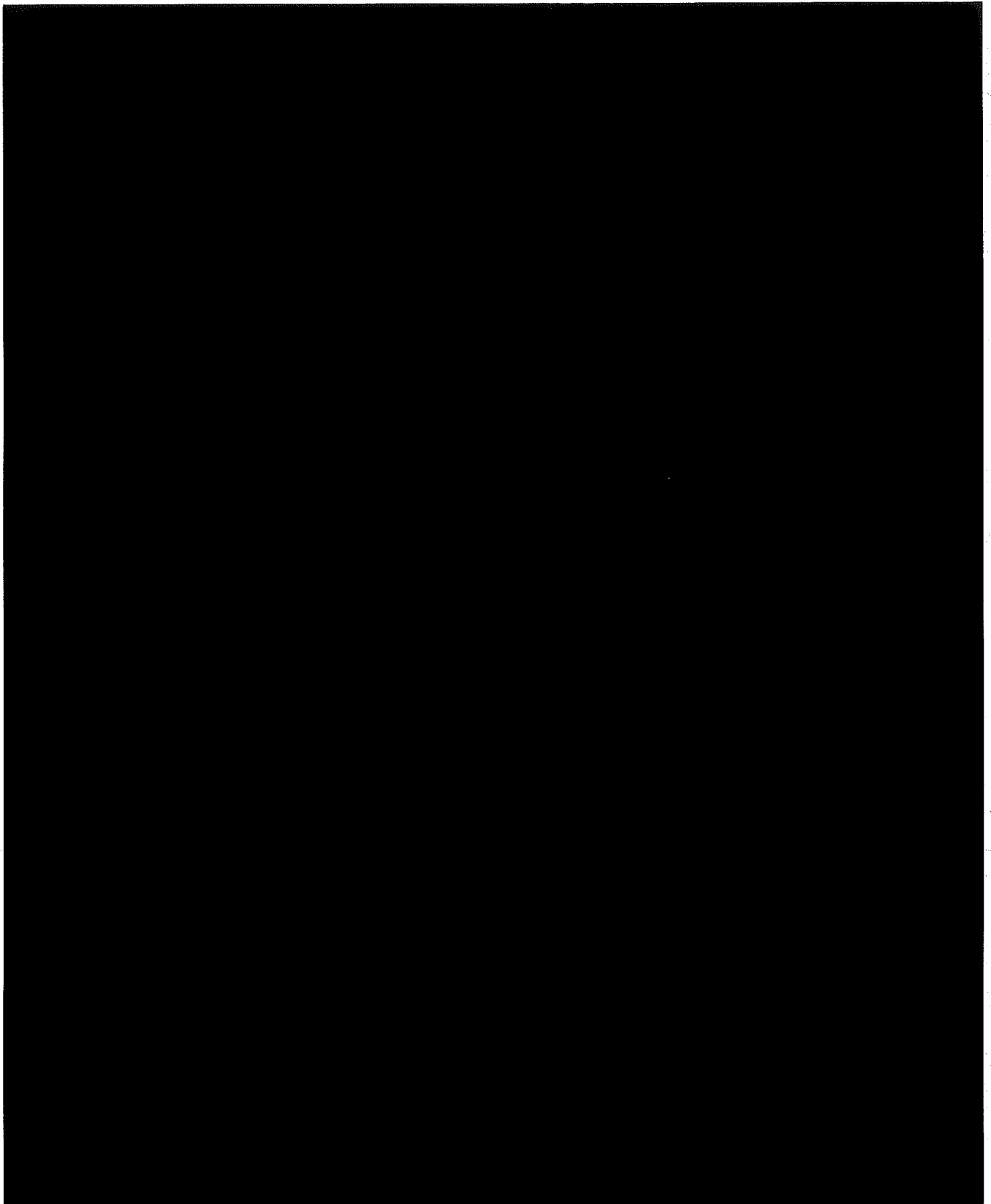


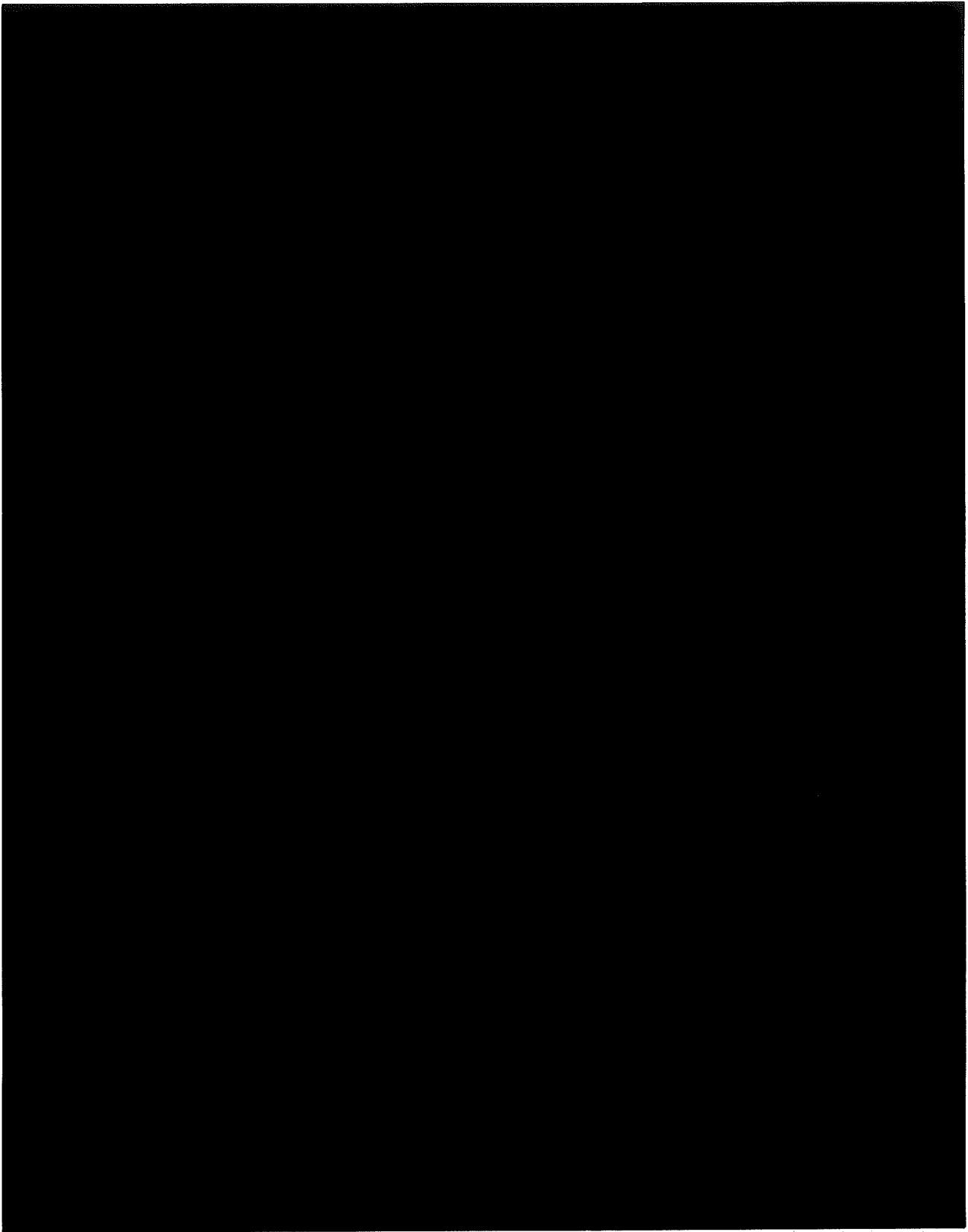


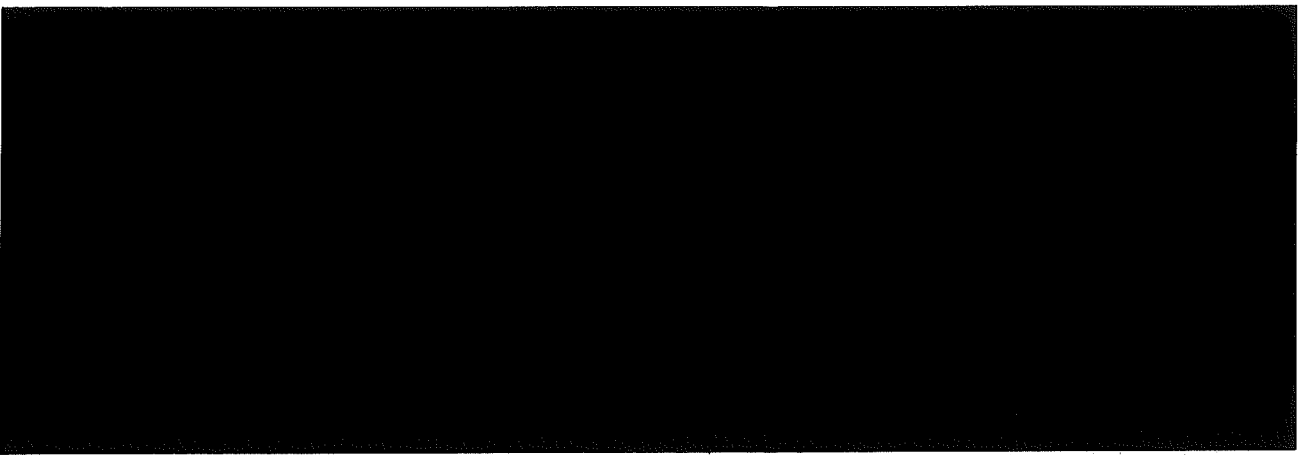












I am available at your convenience to discuss or answer any questions you might have regarding the foregoing analysis or recommendation.

Sincerely,

~~JOHN WITTE SCHNECK SMYTH CASEY & EVEN, P.C.~~



Timothy J. Casey

TJC:eh

Encls.

cc: Chief Jerry Sheridan, via hand-delivery w/encl.
Chief Jack MacIntyre, via hand-delivery w/encl.
Tom Liddy, via e-mail w/o encl.

Exhibit 3

How Mexican food drew couple into heart of Arpaio case



Yvonne Wingett Sanchez, The Republic | azcentral.com 12:45 p.m. MST May 8, 2015

Dale Grissom never expected his family to be caught up in a federal court case involving Maricopa County Sheriff Joe Arpaio. But thanks to a craving for Mexican food on a summer day back in 2012, they are now key figures in Arpaio's civil contempt hearing.



(Photo: Michael Schennum/The Republic)

Dale Grissom never expected his family to be caught up in a federal court case involving Maricopa County Sheriff Joe Arpaio (</topic/joe-arpaio/>).

But here they are, thanks to a craving for Mexican food from their favorite restaurant, Someburros, back in summer 2012.

The events of that day led to an important disclosure during civil-contempt proceedings last month against Arpaio in U.S. District Court. Under questioning by Judge G. Murray Snow, Arpaio confirmed a probe into remarks allegedly made to the Grissoms by the judge's wife at the restaurant.

The contempt hearings have focused on the defiance by Arpaio and others of Snow's orders in an ongoing racial-profiling lawsuit.

Snow's questioning of Arpaio left the man of many words nearly speechless and thrust the Grissoms into the middle of a high-stakes political and legal drama.

"It just blew up a couple of weeks ago — like *kapow*," said Grissom, speaking publicly for the first time about the case from behind a screen door as the nightly news blared on TV in his south Phoenix home.

"We just thought, 'Wow — what happened here? And we've been following it right along. We're not trying to hide anything, we're just telling the truth, and that's the way it was, and that's what she said, and hey, whatever happens, happens.'"

PREVIOUSLY: [Attorneys prep for 2nd bout of Arpaio contempt hearings in June \(/story/news/local/phoenix/2015/05/07/sheriff-joe-arpaio-contempt-hearings-second-bout-june/70931926/\)](/story/news/local/phoenix/2015/05/07/sheriff-joe-arpaio-contempt-hearings-second-bout-june/70931926/)

The judge's wife, Cheri Snow, declined comment when reached by phone Thursday.

About a month after their lunch-time encounter at Someburros, Snow presided over the start of a trial to weigh allegations that Arpaio's office engaged in a pattern of discriminatory policing.

Dale said that he and his family sat at a table just a few feet from Cheri. He said Cheri began talking to Karen, confusing her with Karen's sister, an acquaintance of Cheri's from their childhood days in Yuma.

"She was talking to my wife and I don't even know how it got brought up," recalled Dale, 66. "And I heard them start talking about Sheriff Joe and how her husband wanted him out and didn't want him back in office again, and that's kind of where it went, then they talked about school.

"I didn't pay attention. As soon as that came up, that stuck to me, and I thought, 'How rude is that? Why is this guy, a federal judge, telling his wife he doesn't want Sheriff Joe back in office — and why is she out telling people?'"

The Grissoms returned home and didn't think much of Cheri's remarks until May 2013, when they heard that her husband had ruled Arpaio and his deputies violated the constitutional rights of Hispanics by targeting them during raids and traffic stops.

Dale says he's not a die-hard Arpaio fan or critic, saying, "There's a lot of things where he kind of goes overboard, but I think he's a good sheriff."

But news of Snow's decision upset his wife in light of Cheri's alleged comments, Dale recalled. (Karen would not come to the front door to speak to *The Arizona Republic*.)

"It went on and on and on, and it just got to bothering her and she said, 'I think they need to know,' " Dale remembered.

Three months later, in August 2013, Karen sent a Facebook message to Arpaio that described her encounter with Cheri. It said, in part, that "she told me that her husband hates u and will do anything to get u out of office. This has bothered me since last year when I saw her."

Days later, a private investigator arrived at their home. Jerry Sheridan, Arpaio's chief deputy, said Tim Casey, Arpaio's former defense attorney on the racial-profiling case, hired the investigator to look into the veracity of the message.

Sheridan said the office was obligated to look into Karen's note: "The sheriff and I felt that we should have our lawyer look into the comment in the event that it was made, and it was credible, because it went to the judge's state of mind," Sheridan said in an interview.

Dale said he was outside when the private investigator stopped by.

"They came to talk to us and to see how we were and ... if we were a bunch of kooks with tinfoil hanging on our heads," Dale said, laughing.

He says he never learned what happened after their interviews, "But I don't believe the investigator went to investigate Snow's wife."

When asked that question, Sheridan said Casey told him and Arpaio there wasn't enough evidence to take the tip any further.

"And it sat in my desk drawer for a year and a half, until it came out in court when the sheriff was on the stand," Sheridan said. "We had no intention to do anything with it because we were told it would be unethical for us to make a complaint on a third-party hearsay."

Dale stands by his story, saying he and his wife were truthful in their account.

"I would not go as far to lie for Sheriff Joe," he said. "I mean, I like the guy, but I wouldn't go as far and say ... this. I wouldn't do that. You just don't do that."

Reach the reporter at yvonne.wingett@arizonarepublic.com or 602-444-4712.

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[\(/story/ejmontini/2015/05/10/sen-john-mccain-sheriff-paul-babeu-joe-arpaio-barney-fife-chief-wiggum/70958158/\)](http://story/ejmontini/2015/05/10/sen-john-mccain-sheriff-paul-babeu-joe-arpaio-barney-fife-chief-wiggum/70958158/)

Fife' (/story/ejmontini/2015/05/10/sen-john-mccain-sheriff-paul-babeu-joe-arpaio-barney-fife-chief-wiggum/70958158/)

May 10, 2015, 7:48 a.m.




Letting them go, and hoping everything will be OK

[\(/story/karinabland/2015/05/08/karina-bland-my-so-called-midlife-mothers-day-letting-go-college/70976970/\)](http://story/karinabland/2015/05/08/karina-bland-my-so-called-midlife-mothers-day-letting-go-college/70976970/)

(/story/karinabland/2015/05/08/karina-bland-

[my-so-called-midlife-mothers-day-letting-go-college/70976970/](#)
May 9, 2015, 10:10 p.m.



[Despite tumult, key stock-market tenets stand test of time](#)

[\(/story/money/business/consumer/2015/05/08/despite-tumult-key-stock-market-tenets-stand-test-time/27005601/\)](#)
[\(/story/money/business/consumer/2015/05/08/despite-tumult-key-stock-market-tenets-stand-test-time/27005601/\)](#)
May 8, 2015, 3:08 p.m.

IMMIGRATION AND SHERIFF JOE ARPAIO

200520062007200820092010201120122013201420152016

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

MANUEL de JESUS ORTEGA MELENDRES, on
behalf of himself and all others similarly
situated; *et al.*

Plaintiff,

v.

JOSEPH M. ARPAIO, in his individual
And official capacity as Sheriff of Maricopa
County, Arizona; *et al.*

Defendants.

DENNIS L. MONTGOMERY

Intervenor.

Civil Action No.
CV-07-2513-PHX-GMS

**[PROPOSED] ORDER GRANTING MOTION FOR RECONSIDERATION OF MOTION
FOR ADMITTANCE PRO HAC VICE OF JONATHON A. MOSELEY**

Upon consideration of Motion For Reconsideration Of Motion For Admittance Pro Hac
Vice Of Jonathon A. Moseley, the Court, having considered same, and all papers and argument
in connection therewith, finds as follows:

IT IS HEREBY:

ORDERED: that Motion For Reconsideration Of Motion For Admittance Pro Hac Vice
Of Jonathon A. Moseley is hereby **GRANTED**. Jonathon A. Moseley is hereby admitted to
practice before this Court pro hac vice.

DATED this ____ day of _____, 20____.

Hon. G. Murray Snow
United States District Judge

Exhibit 5

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Manuel de Jesus Ortega Melendres, on
behalf of himself and all others similarly
situated; et al.

Plaintiffs,

v.

Joseph M. Arpaio, in his individual and
official capacity as Sheriff of Maricopa
County, AZ; et al.

Defendants.

No. CV-07-2513-PHX-GMS

ORDER

Sheriff Joseph Arpaio and the Maricopa County Sheriff's Office ("Defendants") have filed objections to the procedure for document preservation and production outlined at the Show Cause proceedings and in this Court's April 27, 2015 Order (Doc. 1032).

First, Defendants have requested time to review the sequestered documents for attorney-client privilege, work-product immunity, and/or any other applicable privilege. To the extent that this amounts to an objection by Defendants to the Court's previous directions that the documents be transmitted "as soon as is reasonably possible," (*see id.* at 1), the Court hereby orders that Defendants expeditiously complete their privilege review of all documents, memoranda, reports, records, notes, e-mails, social media messages, photographs, audio/video recordings, contracts, meeting minutes, timesheets, financial records, or other materials disclosed to the Monitor during the evidentiary hearing that pertain to the Seattle, Washington/Dennis Montgomery and Grissom

1 investigations, and turn over Bates-stamped copies to the Plaintiffs and the Monitor by
2 the May 8, 2015 status conference. The Court notes that counsel for Defendants were
3 present and conducting a review for privilege contemporaneously with the initial
4 disclosure of documents to the Monitor. Counsel has now had over a week to continue
5 this process. No further production has apparently occurred, however, since the date of
6 this Court's initial orders on April 23 and 24. The process set forth by the Court with
7 respect to these documents is necessary in light of Defendants' history of spoliation of
8 evidence and non-compliance with orders relating to document discovery. Defendants are
9 to promptly respond to all related future requests for documents by the Monitor by either
10 producing the materials sought or seeking an appropriate protective order from the Court.

11 Second, Defendants' contention that Sheriff Arpaio's due process rights were
12 implicated by the April 23, 2015 colloquy with the Court is untimely and without merit.
13 The Court notes at the outset that Defendants have requested no specific relief stemming
14 from this objection. The Federal Rules of Evidence extend to the Court the right to
15 participate in questioning, and even call its own, witnesses. Fed. R. Evid. 614. The Court
16 also has inherent power to compel testimony, concomitant with its authority to police
17 litigants whose actions show bad faith or the intent to hamper enforcement of court
18 orders. *See Chambers v. NASCO, Inc.*, 501 U.S. 32, 46 (1991). Furthermore, incident to
19 their responsibility to ensure the fairness of the process for all parties, trial courts have an
20 obligation to clarify the evidence presented and ensure that all facts relevant to the
21 proceedings are brought out. *United States v. Parker*, 241 F.3d 1114, 1119 (9th Cir.
22 2001). It follows that the Court's intervention in witness examination is particularly
23 appropriate when one party has restricted the other's ability to develop an evidentiary
24 record through pre-trial discovery.

25 Neither Sheriff Arpaio's civil nor criminal counsel objected to the examination at
26 the time, and counsel for Defendants elicited testimony on the same subject matter from
27 Chief Deputy Sheridan the following day. Defendants offer no precedent for their
28 assertion that a fact witness in a legal proceeding is entitled to notice of all questions that

1 might be posed to him. The questions posed by the Court, and later by defense counsel,
2 relate to the efficacy and integrity of MCSO's internal investigative processes, the
3 agency's approach to addressing conflicts of interest, and the relative resistance of
4 MCSO's command staff to the authority of the federal court. As the Court explained
5 during the hearing, whether the events giving rise to the charged bases in the Order to
6 Show Cause were isolated incidents of non-compliance or a reflection of a larger pattern
7 of the Maricopa County Sheriff's Office's subversion of this Court's orders is relevant
8 both to the Defendants' liability in contempt as well as to the scope of appropriate
9 remedies for Defendants' conduct. Defendants' objection is, therefore, overruled.

10 Third, consistent with its oral orders on April 24, 2015, the Court **GRANTS**
11 Defendants' Motion to Seal Document 1021 Transcript (Doc. 1038). The Court directs
12 the Clerk of the Court to seal the transcript of the April 22, 2015 Evidentiary Hearing
13 (Doc. 1021) to preserve the privileged nature of the information communicated to the
14 Court by Thomas Liddy, of the Maricopa County Attorney's Office, regarding the nature
15 of his ethical conflict and pending Motion to Withdraw. A version of the transcript that
16 omits the challenged sidebar discussion will be refiled and available for order shortly
17 thereafter. The privileged excerpt of the April 22, 2015 hearing transcript, page 307, line
18 23 to page 311, line 16, shall be maintained under seal.

19 **IT IS SO ORDERED.**

20 Dated this 4th day of May, 2015.

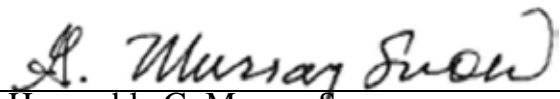
21 
22 Honorable G. Murray Snow
23 United States District Judge
24
25
26
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28

Exhibit 6

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Manuel de Jesus Ortega Melendres, on
behalf of himself and all others similarly
situated; et al.

Plaintiffs,

v.

Joseph M. Arpaio, in his individual and
official capacity as Sheriff of Maricopa
County, AZ; et al.

Defendants.

No. CV-07-2513-PHX-GMS

ORDER

A status conference in this action was held on May 14, 2015. The Court orders the following:

1. On May 07, 2015, Magistrate Judge John Z. Boyle issued a ruling regarding the applicability of attorney-client privilege and/or work-product immunity to certain disclosures made by Thomas Liddy and Karen Clark, on behalf of former defense counsel Timothy Casey. (*See* Doc. 1053.) Subsequent to this order, Chief Deputy Gerard Sheridan voluntarily disclosed Mr. Casey's mental impressions, opinions, and advice in an interview with the *Arizona Republic*.¹ Thus, the matter is referred back to Judge Boyle for re-evaluation on the continued applicability of the opinion

¹ See Yvonne Wingett Sanchez, *How Mexican Food Drew Couple Into Heart of Arpaio Case*, *Ariz. Republic*, May 08, 2015, available at <http://www.azcentral.com/story/news/local/phoenix/2015/05/07/mexican-food-drew%20-grissom-couple-heart%20-sheriff%20-joe-arpaio-civil-contempt%20-case/70990098/>.

1 work-product doctrine to these materials in light of Chief Deputy Sheridan's
2 statements to the press. Although, of course, Judge Boyle will fix any briefing
3 schedule, the Court requests that if the parties wish to brief the issue they do so
4 expeditiously.

- 5 2. The Application of Attorney for Admission to Practice Pro Hac Vice received by
6 Jonathon A. Moseley, who practices in Virginia, is denied. The record
7 demonstrates that actual and potential conflicts of interest exist between Mr.
8 Moseley's current representation of Sheriff Arpaio in another action and his
9 proposed representation of Mr. Dennis L. Montgomery before this Court. *See* E.R.
10 1.7(a) ("[A] lawyer shall not represent a client if the representation involves a
11 concurrent conflict of interest."); *Cole v. U.S. Dist. Court for the Dist. of*
12 *Idaho*, 366 F.3d 813, 822 (9th Cir. 2004) ("Attorneys admitted pro hac vice are
13 held to the same professional responsibilities and ethical standards as regular
14 counsel. . . ."). Mr. Moseley was given the opportunity to appear telephonically at
15 the status conference but did not do so. The Court denies Mr. Moseley's
16 application. Accordingly, his pending Motion to Intervene (Doc. 1057) and
17 Motion to Disqualify (Doc. 1067) are hereby stricken pursuant to Federal Rule of
18 Civil Procedure 12(f) and Local Rule 7.2(m)(1).
- 19 3. In light of the newly disclosed documents, the Court orders that the parties
20 proceed as follows so as to effectively manage the discovery period prior to the
21 continuation of the show cause hearing:
- 22 a. The Monitor, pursuant to its authority to evaluate the integrity of MCSO's
23 operations and compliance efforts, shall investigate matters that are raised
24 by the documents recently disclosed to them by Defendants. The Parties
25 shall fully cooperate with such investigations. Although the Monitor has
26 broad authority to set the direction of an investigation, this authority is
27 limited by the orders previously entered in this matter. Ongoing
28 investigations by the MCSO Professional Standards Bureau do not restrict

the Monitor in his investigative authority.

- b. Chief Sherry Kiyler is authorized to be involved in all investigations pertaining to recent MCSO disclosures.
- c. To the extent that the Monitor interviews persons who are in the employ of MCSO, any and all counsel may be present at the interviews. All parties and specially appearing non-parties will have the right to pay for and obtain transcripts of any interview done by the Monitor.
- d. The witness is entitled to counsel at his or her own expense, and is also entitled to all rights and privileges which are available to him or her under federal law.
- e. The Parties and named non-party contemnors may conduct their own depositions coextensively with the Monitor, so long as they obtain the approval of the Monitor prior to scheduling such depositions so as not to interfere with the Monitor's investigation. Copies of transcripts from all such deposition shall be provided to the Monitor.
- f. Aspects of the "Seattle operation" are germane to the show cause proceedings, and shall be addressed by the Parties insofar as they relate to the charged bases for contempt or the appropriateness of any remedial measures. The Court will consult with the Parties on the topics that merit addressing at the hearings to be resumed on June 16, 2015 once the scope of relevant issues are sufficiently refined by document review and the Monitor's investigations.

Dated this 14th day of May, 2015.

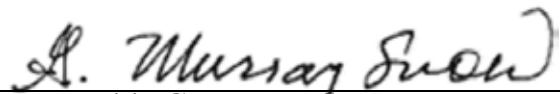

Honorable G. Murray Snow
United States District Judge

Exhibit 7

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Manuel de Jesus Ortega Melendres, on
behalf of himself and all others similarly
situated; et al.

Plaintiffs,

v.

Joseph M. Arpaio, in his individual and
official capacity as Sheriff of Maricopa
County, AZ; et al.

Defendants.

No. CV-07-2513-PHX-GMS

**CLARIFICATION RE DOCUMENTS
1117 AND 1120 AND VACATING
EVIDENTIARY HEARING OF
JUNE 16-19; 23-26, 2015**

On May 22, 2015, Sheriff Joseph Arpaio, and non-party contemnor Chief Deputy Gerard Sheridan filed a Motion for Recusal/Motion to Disqualify Judge. (Doc. 1117.) In light of this Motion, this Court issued an order vacating the three status conferences set for May 29, June 5 and June 12, 2015. It further indicated that “it shall issue no further orders until the motion has been briefed and/or a ruling has been issued.” (Doc. 1120.)

Neither Defendants’ Motion nor this Court’s May 22, 2015 Order suspended or called into question any of the Court’s previous orders. Specifically, the Order did not suspend the responsibilities of Defendants or the Monitor as are set forth in the Permanent Injunction, the Supplemental Permanent Injunction, or any amendments thereto, which enforce the terms of this Court’s findings of facts and conclusions of law and which have been upheld in virtually all respects by the Ninth Circuit Court of Appeals. *See Melendres v. Arpaio*, No. 13-16285, 2015 WL 1654550, at *10 (9th Cir.

1 Apr. 15, 2015). The Court's May 22 Order merely aims to preserve the status quo vis-à-
2 vis the civil contempt proceedings that were scheduled to resume in mid-June until the
3 Court rules on Defendants' Motion. Nevertheless, after Defendants filed their Motion,
4 counsel for MCSO and Sheriff Arpaio contacted the Monitor to state that "[b]ased on the
5 Court's Order . . . the *Melendres* case is stayed until a decision is made regarding the
6 Motion to Recuse or Motion to Disqualify (Doc. 1117). Therefore, the Monitor's . . . site
7 visits scheduled are stayed as well." The Monitor had a regular monitoring site visit and
8 community meeting, as required by the terms of the Supplemental Permanent Injunction,
9 scheduled for the following week. To avoid confrontation, the Monitor cancelled its
10 scheduled site visit and community meeting. Nothing about the Court's May 22 order
11 suggested such a cancellation.

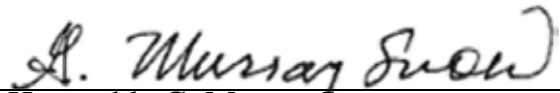
12 Nevertheless, until the Court rules on Defendants' Motion, the Monitor shall not
13 seek to conduct independent investigations within the MCSO relating to the subjects of
14 Order to Show Cause. This does not affect, however, the Monitor's authority to act
15 pursuant to the terms of the Supplemental Permanent Injunction or other self-enforcing
16 orders—*e.g.*, those that do not require further action from this Court. In supervising
17 administrative investigations undertaken by the MCSO that bear relation to the
18 constitutional rights of the Plaintiff class, including those investigations that may have
19 been triggered by events also relevant to the civil contempt hearing (such as those arising
20 from the posthumous inquiry into Deputy Armendariz), the IA Monitors act pursuant to
21 the terms of the Supplemental Permanent Injunction and self-enforcing provisions of this
22 Court's November 20, 2014 Order. (*See* Doc. 795, *amended by* Doc. 825.) Should the
23 Court be required to enter additional orders to preserve the relative positions of the
24 Parties in the interim period, it will vacate its previous Order (Doc. 1120).

25 In addition, the Court has received Defendants' objection to the United States
26 Department of Justice's examination of the documents that were allegedly harvested from
27 the Central Intelligence Agency and provided to Defendants by Dennis Montgomery.
28 (Doc. 1138.) Therefore, the Monitor shall not cooperate with the DOJ on a voluntary

1 basis to facilitate such examination, pending the Court's ruling on Defendants' Motion.

2 Lastly, the Court has received the Parties' stipulation that Plaintiffs' Response to
3 the Motion for Recusal will be filed by June 12, and Defendants' Reply will be filed by
4 June 22. Because those dates continue up through the dates held for the continued
5 contempt proceedings, the Court hereby **VACATES** the evidentiary hearing scheduled
6 for June 16-19; 23-26, 2015. This matter will be reset following the resolution of
7 Defendants' Motion.

8 Dated this 1st day of June, 2015.

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10 Honorable G. Murray Snow
11 United States District Judge
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Exhibit 8

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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
8

9 Manuel de Jesus Ortega Melendres, on
10 behalf of himself and all others similarly
situated; et al.

11 Plaintiffs,

12 v.

13 Joseph M. Arpaio, in his individual and
14 official capacity as Sheriff of Maricopa
County, AZ; et al.

15 Defendants.

No. CV-07-2513-PHX-GMS

ORDER

16
17 In early May 2015, the Court received an Application of Attorney for Admission
18 to Practice Pro Hac Vice from Mr. Jonathan A. Moseley, who practices in Virginia. The
19 application was accompanied by a two page letter dated May 2, 2015 and a three page
20 document entitled Additional Information. Mr. Moseley subsequently filed a Motion to
21 Intervene in this action on behalf of Dennis Montgomery, along with various other
22 motions and memoranda. (*See* Docs. 1057, 1058, 1067, *stricken by* Doc. 1093.)
23 Following a status conference at which Mr. Moseley was invited to appear telephonically
24 in support of his request for admission pro hac vice, and at which he did not appear, the
25 Court denied Mr. Moseley's application. (*See* Doc. 1093.) Mr. Moseley now moves for
26 reconsideration of his application for admission on the grounds that (1) the record does
27 not reflect the existence of any conflict of interest between Mr. Moseley's representation
28 of Sheriff Joseph Arpaio in another action and his intended representation of Mr.

1 Montgomery in this case; (2) Mr. Montgomery's Sixth Amendment right to counsel
2 would be violated if Mr. Moseley is unable to represent him pro hac vice; and (3) the
3 Court should recuse itself. (Doc. 1112.) Mr. Montgomery has since filed three
4 supplements to this Motion. (Docs. 1140, 1160, 1161.)

5 Local Rule of Civil Procedure 7.2(g) provides that a party seeking reconsideration
6 of a ruling shall, in that motion, "point out with specificity the matters that the movant
7 believes were overlooked or misapprehended by the Court, any new matters being
8 brought to the Court's attention for the first time and the reasons they were not presented
9 earlier, and any specific modifications being sought in the Court's Order." The movant
10 may not repeat any argument previously made in support of the motion that resulted in
11 the challenged order. L.R. Civ. 7.2(g). Motions for reconsiderations are disfavored, and
12 will ordinarily not be granted "absent a showing of manifest error or a showing of new
13 facts or legal authority that could not have been brought to its attention earlier with
14 reasonable diligence." *Id.*; *Morgal v. Maricopa Cnty. Bd. of Supervisors*, No. CIV-07-
15 0670-PHX-RCB, 2012 WL 2368478, at *1 (D. Ariz. June 21, 2012) (noting motions for
16 reconsideration should be granted only in rare circumstances). As with all motions,
17 failure to comply with the local rules of procedure are grounds for denial of the motion.
18 L.R. Civ. 7.2(g).

19 As a preliminary matter, Mr. Moseley's challenge of the Court's articulated
20 concern that his admission could create a conflict of interest fails to advance any grounds
21 different from those contained in his Clarification of Motion for Admittance Pro Hac
22 Vice, filed prior to the Court heard argument on his application for admission. (*See* Doc.
23 1080); L.R. Civ. 7.2(g) ("No motion for reconsideration of an Order may repeat any . . .
24 argument made by the movant in support of or in opposition to the motion that resulted in
25 the Order."). Moreover, his Motion for Reconsideration does not address the issues raised
26 at the status conference the Court held in these matters on May 14, 2015, at which Mr.
27 Moseley's application was discussed and, ultimately, denied.¹ Under the Arizona Rules

28 ¹ As noted above, Mr. Moseley was authorized to appear telephonically at this

1 of Professional Conduct, a lawyer may not represent a client if the representation
2 involves a concurrent conflict of interest, such as where “the representation of one client
3 will be directly adverse to another client” or where “there is a significant risk that the
4 representation of one or more clients will be materially limited by the lawyer’s
5 responsibilities to another client” E.R. 1.7(a). “Attorneys admitted pro hac vice are
6 held to the same professional responsibilities and ethical standards as regular
7 counsel. . . .” *Cole v. U.S. Dist. Ct. for the Dist. of Idaho*, 366 F.3d 813, 822 (9th Cir.
8 2004). The comments to E.R. 1.7 offer some guidance on whether an impermissible
9 conflict exists: the comments provide that a “lawyer may not act as an advocate in one
10 matter against a person the lawyer represents in some other matter, even when the matters
11 are wholly unrelated.” A conflict may also “exist by reason of substantial discrepancy in
12 the parties’ testimony, [or] incompatibility in positions in relation to an opposing
13 party” E.R. 1.7 (advisory notes).

14 The interests of Mr. Montgomery are adverse to the interests of Sheriff Arpaio and
15 the MCSO, or at least the risk of such adversity, is sufficiently present to warrant denying
16 Mr. Moseley’s application to represent the former. (*See also* Doc. 1145 (noting the
17 parties’ differences with some positions taken by Mr. Moseley)). Mr. Moseley concedes
18 that he has an attorney-client relationship with Sheriff Arpaio stemming from his
19 affiliation with Freedom Watch, which represents the Sheriff in another action in the
20 Circuit Court for the District of Columbia challenging President Obama’s executive
21 action on immigration. Mr. Moseley seeks admission on behalf of Mr. Montgomery, who
22 was hired as a confidential informant by the MCSO. Sheriff Arpaio has testified in this
23 action that the material MCSO received from Mr. Montgomery was “junk.” (Tr. of Apr.
24 23, 2015 Evid. Hr’g 650:20–25, Docs. 1027.). Facts involving the Seattle operation and
25 the credibility of Mr. Montgomery are squarely before this Court, at least insofar as those

26
27 conference, but he gave no indication of his presence during the initial counsel roll call
28 or, later, when directly addressed by the Court at this time the issues of his application
and the potential conflict of interest it posed were raised. (*See* Tr. May 14, 2015 Status
Conf. 32, Doc. 1097.)

1 issues reflect the truthfulness of testimony offered in this matter, and the MCSO's efforts,
2 or lack thereof, in implementing this Court's orders at the same time it may have been
3 devoting resources to funding an investigation to possibly discredit this Court. Therefore,
4 Mr. Moseley's litigating of Mr. Montgomery's stake in the evidence at issue, the validity
5 of which has been repudiated by Sheriff Arpaio, will most likely involve credibility
6 determinations and competing factual testimony. This would seem to necessarily impact
7 the attorney-client relationships Mr. Moseley has with Mr. Montgomery and Sheriff
8 Arpaio, and likely violate his duty of loyalty to one or both of them. Further, Sheriff
9 Arpaio has objected on the record to the positions taken by Mr. Moseley in one of his
10 supplemental pleadings for admission pro hac vice: "Putative intervenor's attorneys
11 Klayman and Mosely [*sic*] neither represent Sheriff Arpaio and Chief Deputy Sheridan,
12 nor speak for the interests of the MCSO in this action or in any proceeding related to this
13 action." (Doc. 1145 at 2.) This is additional evidence that there is sufficient adversity of
14 interests to deny Mr. Moseley's request for admission. The Court has a recognized
15 interest in ensuring that the proceedings in this case are conducted within the standards of
16 the profession. *Cf. Wheat v. United States*, 486 U.S. 153, 160 (1988).

17 In addition to the potential conflict posed by Mr. Moseley's application for
18 admission, there is evidence that Mr. Moseley's representation of Mr. Montgomery
19 would stand in the way of the orderly administration of justice. Mr. Moseley attached a
20 letter dated May 02, 2015 to his pro hac vice application. There is a notation on the letter
21 that counsel of record were sent copies of his application and accompanying materials;
22 yet, no other attorney in this action has ever received these documents from Mr. Moseley.
23 In the letter, Mr. Moseley claims that his appearance would be for the purpose of
24 presenting answers to this Court. However, before his application for admission pro hac
25 vice was considered, Mr. Moseley filed several substantive motions not previously
26 referenced in his application or accompanying letter. Mr. Moseley subsequently
27 acknowledged that portions of the letter relating to his filing of an amicus curiae brief for
28 Sheriff Arpaio were also inaccurate. Following that, Mr. Moseley attempted to withdraw

1 the letter in its entirety. Then, Mr. Moseley reached out to the Court about appearing
2 telephonically in support of his Motion for Reconsideration and failed to do so or explain
3 his absence, although he contacted the Court about obtaining a transcript of the
4 proceedings following their conclusion. At the hearing, Plaintiffs provided the Court with
5 information that raises additional concerns about Mr. Moseley's ethical fitness to be
6 admitted to practice in this district pro hac vice. (Tr. May 14, 2015 Status Conf. 34:22–
7 39:9, Doc. 1097 (referencing *Moseley v. Virginia State Bar, ex rel. Seventh Dist. Comm.*,
8 280 Va. 1, 1, 694 S.E.2d 586, 588 (2010)).) Mr. Moseley's engagement in this action to
9 date demonstrates a substantial likelihood that his conduct would hinder the efficacious
10 administration of justice if he were to be admitted. Where "an out-of-state attorney
11 strongly suggests through his behavior that he will neither abide by the court's rules and
12 practices . . . nor be readily answerable to the court, the judge may reject his pro hac
13 vice application." *Ries*, 100 F.3d at 1471. Mr. Moseley fails to demonstrate how the
14 Court's previous denial of his application amounted to manifest error.

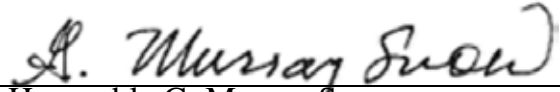
15 The second point in Mr. Moseley's Motion for Reconsideration is also misplaced.
16 There is no constitutional right to counsel in a civil action, which this is. *United States v.*
17 *Sardone*, 94 F.3d 1233, 1236 (9th Cir. 1996). Further, in any case, a litigant's right
18 to choose his counsel is not unlimited and may give way to serve a "compelling purpose"
19 such as "the efficient and orderly administration of justice." *United States v. Walters*, 309
20 F.3d 589, 591–92 (9th Cir. 2002); *see also United States v. Ries*, 100 F.3d 1469 (9th Cir.
21 1996) (finding court may impinge on right to have chosen attorney admitted pro hac vice
22 where the attorney's admission is sought for a dilatory purpose or is otherwise subversive
23 of the ethical and orderly judicial process). For the reasons stated above, the record
24 strongly suggests that admission of Mr. Moseley would indeed interfere with the orderly
25 adjudication of this case. Thus, the interest underlying the Court's denial of Mr.
26 Moseley's application also provides a sufficiently compelling reason to warrant depriving
27 Mr. Montgomery of his preferred choice of counsel.

28 Mr. Moseley's third point is a reiteration of previous arguments made in support

1 of the Motion to Intervene he filed concomitantly with seeking admission pro hac vice,
2 and does not constitute “new facts or legal authority” to justify this Court’s
3 reconsideration of his application.² See L.R. Civ. 7.2(g).

4 **IT IS THEREFORE ORDERED** that Mr. Moseley’s Motion for
5 Reconsideration (Doc. 1112) is **DENIED**.

6 Dated this 10th day of July, 2015.

7 
8 Honorable G. Murray Snow
United States District Judge

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27 _____
28 ² None of the supplements filed by Mr. Moseley and Mr. Klayman address the
apparent conflict of interest between Mr. Montgomery and Sheriff Arpaio or present new
arguments sufficient to cause this Court to reconsider the denial of their application.

Exhibit 9

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Manuel de Jesus Ortega Melendres, on
behalf of himself and all others similarly
situated; et al.

Plaintiffs,

v.

Joseph M. Arpaio, in his official capacity as
Sheriff of Maricopa County, Arizona; et al.

Defendants.

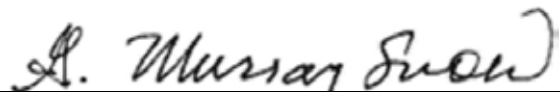
No. CV-07-2513-PHX-GMS

ORDER

The Court held a hearing with the parties on July 24, 2015. Defendants are hereby ordered to turn over all items of evidence associated with DR 14-007250, including hard drives, documents, and/or any other and materials, to the custody of the United States Marshals Service by the end of the day today, July 24, 2015. The Marshals shall store this evidence in a secure location and make it available, upon request and under secure conditions, to the parties and to the United States Government for copying pursuant to the Court's previous orders. Defendants are further ordered to produce to the Marshals the 1,459 identifications that lack an associated DR number.

IT IS SO ORDERED.

Dated this 24th day of July, 2015.



Honorable G. Murray Snow
United States District Judge

Exhibit 10

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Manuel de Jesus Ortega)
Melendres, et al.,)
)
Plaintiffs,) CV 07-2513-PHX-GMS
)
vs.) Phoenix, Arizona
) May 8, 2015
Joseph M. Arpaio, et al.,) 9:01 a.m.
)
Defendants.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE G. MURRAY SNOW
(Status Conference)

Court Reporter: Gary Moll
401 W. Washington Street, SPC #38
Phoenix, Arizona 85003
(602) 322-7263

Proceedings taken by stenographic court reporter
Transcript prepared by computer-aided transcription

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Also present:

(Telephonically) Chief Robert S. Warshaw, Monitor
(Telephonically) Deputy Monitor John Girvin
(Telephonically) Deputy Monitor Raul Martinez
Ms. Sandi Wilson
Karen Clark, Esq.
Ms. Cari Shehorn

P R O C E E D I N G S

THE COURT: Please be seated.

THE CLERK: This is civil case number 07-2513,
Melendres v. Arpaio, on for status conference.

09:01:18

Counsel, please announce your appearances.

MR. YOUNG: Good morning, Your Honor. For plaintiffs,
Stanley Young, Covington & Burling.

MR. BENDOR: Josh Bendor, ACLU of Arizona.

MR. POCHODA: Dan Pochoda, ACLU of Arizona.

09:01:30

MS. IAFRATE: Good morning, Your Honor. Michele
Iafrate, and with me is my law clerk, Cari Shehorn, on behalf
of Sheriff Arpaio.

THE COURT: Good morning.

MR. BIRNBAUM: Good morning, Your Honor. Gary
Birnbaum. I'm appearing specially for Deputy Chief John
MacIntyre.

09:01:39

THE COURT: Good morning.

MR. BIRNBAUM: Thank you.

MR. WALKER: Good morning, Your Honor. Richard Walker
appearing on behalf of that portion of the Maricopa County
government embodied by the board of supervisors, the county
manager, and the appointed county officers reporting to them.

09:01:46

THE COURT: Good morning. Is Ms. Wilson here this
morning?

09:02:01

1 and that's why we're making the request.

2 Ms. Iafrate did advise yesterday that she is still
3 considering our request for those documents, and so we have not
4 received defendants' position on that yet.

5 THE COURT: Ms. Iafrate.

09:21:44

6 MS. IAFRATE: Your Honor, I received this request on
7 May 5th in a letter. I would beg your indulgence --

8 THE COURT: You have it. We're going to meeting every
9 week. Let me just say, and I was going to raise this later,
10 and perhaps I will raise it later, but it strikes me that
11 plaintiffs do have the opportunity, in light of the deficits
12 that have been discovered, to seek to reopen the nature of the
13 injunctive relief that I have requested. It does strike me
14 also that, you know, Maricopa County can resist that, has the
15 right to resist it.

09:21:59

09:22:24

16 It seems to me the practical reality of that, though,
17 is I either make a determination based on this record that we
18 develop over the next couple of months or I reset this matter
19 for a whole new trial. It strikes me as being worth the effort
20 for the -- whatever else you're going to say, it seems to me
21 that civil contempt -- a civil contempt order is going to be --
22 at least a civil contempt order is going to be entered here at
23 least against some defendants. They've confessed it.

09:22:43

24 And again, I don't want to prohibit your rights,
25 Ms. Iafrate, I don't want to prohibit your rights, Mr. Young, I

09:23:00

1 don't want to prohibit your rights, Mr. Como, or anybody
2 else's, but it seems to me that it would be worthwhile for you
3 to talk and see what kind of remedies, Mr. Young, you would
4 propose, and see if those are acceptable to Ms. Iafrate.

5 And if they are -- and I realize that you may not be 09:23:23
6 able to provide specific ones until the evidence is developed,
7 but at least the general types of remedies -- because if they
8 are, I think it would be, arguably, to the benefit of all
9 parties, because I'm going to give, at a minimum, if Maricopa
10 County fights everything, I'm going to give a new trial to the 09:23:39
11 plaintiffs as -- it's extremely likely, and I'm not going to
12 make them wait and submit a fee award. Since the trials have
13 been very expensive, I will require monthly payments to be made
14 to the plaintiffs' counsel to pay for that trial since they
15 should not have to pay for it, in light of the fact that 09:23:58
16 this -- it would be part of a civil contempt award.

17 And I don't say that to be threatening, I'm just
18 telling you what I'm thinking, so that it might make sense from
19 your perspective and from their perspective to either stipulate
20 to a field of discovery that they want, to discover this and 09:24:12
21 see if you can arrive at remedies that you can all live with,
22 because it does seem to me like, and we'll discuss this in
23 others respects, too, the option is a whole new trial of this
24 case from the beginning, or at least that's certainly one
25 option. So I'd like to sort of set that in place so that you 09:24:33

1 can consider it.

2 But Ms. Iafrate, as you consider their request, I
3 guess to the extent any of that sort of musing of mine is
4 helpful, I wanted to give it to you. And I think I wanted to
5 raise it a little bit later on as it pertains to other issues,
6 because I think there are issues that we can do something about
7 and there are issues that we can't do much about, and of course
8 I want to have counsels' input on that.

09:24:45

9 And if we can't do much about them in this hearing,
10 then I think that we need to figure out what the appropriate
11 response is but not waste a lot of time on it. If we can do
12 something about it and can agree, then we can eliminate issues,
13 and then we can try the issues that deserve to be tried and get
14 this matter resolved.

09:25:01

15 Mr. Young.

09:25:19

16 MR. YOUNG: Your Honor, I assume the new trial you're
17 referring to would be on the subject of remedies.

18 THE COURT: That's correct.

19 MR. YOUNG: Yes. There is one more issue relating to
20 the February 12 order, and I'm going to ask Ms. Iafrate's
21 forgiveness, since this was in the May 5th order -- the May 5th
22 letter that we sent her, but I have not spoken to her about it
23 since then, which is the scope of disclosure with respect to
24 individuals who were detained outside the traffic stop context.

09:25:30

25 We did request in our May 5th letter that we receive

09:25:52

1 believe that in previous discussions with you, you believed
2 that these individuals did fit within the class. Sheriff
3 Arpaio would object.

4 THE COURT: I do have the class here, I think.

5 MS. IAFRATE: Beg your pardon?

09:27:35

6 THE COURT: The class is, quote, all Latino persons
7 who, since January 2007, have been, or will be in the future,
8 stopped, detained, questioned, or searched by MCSO agents while
9 driving or sitting in a vehicle on a public roadway or parking
10 area in Maricopa County, Arizona.

09:28:00

11 It does seem to me -- and again, I'm going to give you
12 a full opportunity to make your argument -- but it does seem to
13 me that if MCSO is detaining someone to take them to Border
14 Patrol because they have no state charge and they're doing it
15 in a motor vehicle on a public roadway, they're the ones that
16 have made them a member of the plaintiff class by definition.

09:28:14

17 And I did ask, I think I recall, I think you're right,
18 I think I recall asking, was it Lieutenant Jakowinicz that?

19 MS. IAFRATE: I don't recall which witness, but I know
20 that it was solicited from your questioning, Your Honor.

09:28:31

21 THE COURT: Well, yeah, I did question him about that.

22 MS. IAFRATE: Right.

23 THE COURT: And it -- just because it does seem to me
24 that when you've done, that you've created a -- I mean, it
25 seems to me that fits within the plaintiff class. But I'll

09:28:46

1 allow you more time to make an objection on that point.

2 MS. IAFRATE: Well, Your Honor, would you like me to
3 do it orally or would you like me to do it in writing,
4 because if it's --

5 THE COURT: I want to give you the chance to do it in 09:28:56
6 writing --

7 MS. IAFRATE: Thank you.

8 THE COURT: -- and we can take it up.

9 MS. IAFRATE: Thank you. Just for a brief statement,
10 Your Honor, of course, I was not part of the original trial. 09:29:01

11 THE COURT: Right.

12 MS. IAFRATE: However --

13 THE COURT: Hardly anybody was any more.

14 MS. IAFRATE: Right. Few people left standing, but --

15 THE COURT: Um-hum. 09:29:13

16 MS. IAFRATE: -- I can tell you that in my review of
17 not only the pretrial discovery, but also the testimony at
18 trial, and even afterward, everything was anticipated that it
19 was resulting from traffic stops and the --

20 THE COURT: Well -- 09:29:25

21 MS. IAFRATE: -- interdiction patrols that were being
22 done by the Sheriff.

23 MR. SCHWAB: I don't think that's a misstatement of
24 the record, and so I'll let you make your argument, but the
25 class is what the class is and the class certified is the class 09:29:36

1 certified. And the class was certified for a reason, and it
2 just seems to me that that fits within the definition of the
3 class. But I'm not arguing with you, and so I'm going to give
4 the chance to make your -- make your record, and give you the
5 chance to do it in writing.

09:29:54

6 MS. IAFRATE: Okay.

7 THE COURT: All right?

8 MR. YOUNG: Your Honor, will there be a timetable for
9 that, given the hearings that are set for June?

10 THE COURT: Yes. When do you think you'll be able to
11 make it?

09:30:03

12 MS. IAFRATE: As to that issue?

13 THE COURT: To file your objection to the discovery
14 request filed by the plaintiffs.

15 MS. IAFRATE: Friday.

09:30:16

16 THE COURT: Okay. So if you will make it Friday, then
17 we will resolve it the following status conference, if you can
18 get a response on.

19 MR. YOUNG: So --

20 THE COURT: So it would be Friday the fif- -- let's
21 see, today is what?

09:30:25

22 MS. IAFRATE: Today is the 8th, Your Honor.

23 THE COURT: Okay. So it would be Friday the 15th
24 you'll have it filed by.

25 MS. IAFRATE: Yes.

09:30:34

1 THE COURT: And we will resolve it at the May 22nd.

2 MS. IAFRATE: Very well.

3 MR. WALKER: Your Honor, just for the record, and I'm
4 sure you recall at our last hearing, my client also objects and
5 respectfully disagrees that the operations, what we call
6 worksite operations are within the scope of the class as
7 defined --

09:30:47

8 THE COURT: All right. You know, this raises another
9 issue. I've been trying -- and I was going to discuss this
10 later, but I might as well raise it now since it's the issue.
11 I do think that one of the purposes of contempt is
12 compensation. Clearly, there have been lots of victims, and
13 clearly it's to the defendants' interests to argue about how
14 broad or how narrowly those interests are defined.

09:31:05

15 But I'm trying to think, is there any way I can
16 compensate the victims of the sheriff's contempt in a realistic
17 way, and I'm having trouble with it. I told the plaintiffs
18 this earlier. I mean, I don't -- I don't know that there is
19 anything I can do in this lawsuit that would restrict the right
20 of anybody to bring a class action or anything else they want
21 to bring.

09:31:27

09:31:44

22 And I suppose that I could compel the creation of a
23 fund as against which claims could be made if somebody wanted
24 to surrender their claims, but I'm not sure -- you know, if I
25 were to do that, that would not have the benefit to the

09:32:09

1 defendants of eliminating liability. And if it wouldn't have
2 the benefit of eliminating liability, then perhaps the
3 plaintiffs ought to either determine whether or not they wanted
4 to bring their own class action, whether they want to associate
5 class counsel, whether they want to provide some sort of
6 procedure whereby we could, if necessary, sever the
7 compensatory aspects of this in a class action that then would
8 be reassigned to me where arguments like this can be made.

09:32:25

9 MR. YOUNG: Well, Your Honor, I can report --

10 THE COURT: And you wouldn't have to -- you wouldn't
11 have to reinvent the wheel with a judge who isn't very familiar
12 with what's going on here.

09:32:44

13 I mean, it seems to me we have a lot of possibilities,
14 but they require some thinking. And I will say, you know, as
15 to whether or not I'm going to -- just so nobody's confused by
16 it, if I feel like I can't give, and I'm not likely to be able
17 to give, any sort of adequate remedy to persons damaged by the
18 sheriff's violation of my preliminary injunction, that does
19 make some difference to me as to whether or not I ought to
20 order up this matter for criminal contempt, just so it's on the
21 table.

09:32:59

09:33:20

22 So Mr. Young?

23 MR. YOUNG: Well, I can -- I appreciate the Court's
24 thoughts on this issue. I can report on where we are.

25 We do intend, in the June hearings, to present

09:33:36

1 evidence on this issue of compensation. We do believe that's
2 an important, very important part of this proceeding, and we
3 appreciate, actually, the expedition that the Court has
4 expressed its desire to achieve.

5 So we have also had some discussions with Mr. Walker 09:33:53
6 and Ms. Iafrate about having a discussion Monday, actually,
7 starting a discussion on whether we can agree on a process for
8 compensation of class members, the people who are victims of
9 the injunction. We haven't yet fleshed that out, but
10 obviously, I mean, I don't think it's too much of a leap to say 09:34:23
11 that if someone obtains compensation in the course of that
12 process, whether it's agreed upon or imposed as a remedy by
13 this Court, that they wouldn't be free in some other lawsuit to
14 seek additional compensation.

15 So it would be our desire to have that compensation 09:34:38
16 for those people who were detained unlawfully in violation of
17 the injunction to obtain compensation as part of the remedy
18 process in this case.

19 THE COURT: All right. Well, I'd suggest, then, that
20 that be a matter that you discuss with defendants and see if 09:34:56
21 you can arrive at a procedure that I will buy. And I'm going
22 to advise you that even if you buy it, and even if they buy it,
23 I might not buy it.

24 MR. YOUNG: Understood.

25 THE COURT: But I think it is worthwhile for you to 09:35:08

1 pursue. Have we resolved that topic? Are we ready to go on to
2 another?

3 The next is the status of defendants' compliance with
4 the Court's April 23rd-24th, 2015 orders relating to document
5 production.

09:35:27

6 I have noticed, Ms. Iafrate, that over the last day or
7 maybe two days, you've started to produce those documents and
8 provide them to all sides. The monitor started to review them
9 and he gave me a couple of concerns that, frankly, I hadn't
10 been aware of, and I want to raise them with you, and I gather
11 that you'll probably have a couple of both logistical and
12 perhaps other concerns you want to raise.

09:35:42

13 Apparently, the materials that you are providing
14 involve records that I -- and, Bob, if I misstate this, tell
15 me -- but I believe the monitor on first cut thinks, based
16 partly on Chief Deputy Sheridan's testimony, there was
17 something I hadn't anticipated. I had not anticipated that
18 Mr. Montgomery would have done a file dump with the MCSO of
19 those files that he apparently procured without authoriza- --
20 or claims to have procured without authorization from the CIA.

09:36:04

09:36:25

21 Is that an issue?

22 MS. IAFRATE: That is an issue, Your Honor.

23 THE COURT: All right. And in those files, at least
24 according to the initial review of my monitor, there is a
25 number of names, addresses, telephone numbers of individuals.

09:36:43

1 So I'm just going to instruct the parties, I've
2 instructed Ms. Iafrate, and I think she's doing her best to
3 comply, to review this material for attorney-client privilege
4 or work product immunity and do a privilege log, but if she
5 doesn't, but all the other documents she's providing in Bates 09:37:04
6 stamped order, and I gather that we may some need to discuss
7 and work that through to all parties so you're all getting
8 material that has peoples names, addresses, and telephone
9 numbers --

10 MS. IAFRATE: As well as Social Security numbers and 09:37:18
11 banking documents, Your Honor.

12 THE COURT: Okay. So there are some banking documents
13 and Social Security numbers. None of that material can be
14 released without authorization of the Court. All right? You
15 can have it. You can review it. You can use it in preparing 09:37:31
16 for this action. But you cannot review it -- or you cannot
17 release it without authorization of the Court.

18 Ms. Iafrate, it occurred to me that if in -- and I
19 know that Chief Deputy Sheridan said that -- and again, Chief,
20 you're here. I don't mean to put words in your mouth; I'm just 09:37:48
21 trying to summarize essentially what your testimony was -- that
22 Mr. Montgomery, the MCSO has determined that he was not
23 credible. And again, you can correct that characterization if
24 you wish to.

25 And so it may be that -- well, I'm sorry. It may be 09:38:06

1 that the doc -- it may be that his assertion that these
2 actually were documents that are a CIA dump are not correct.
3 But it occurs to me that if there is a chance that you believe
4 that you did receive CIA files, if you haven't already done it,
5 if you have not already done it, I'm going to ask you to
6 contact the chief counsel for the CIA and inform him that you
7 received these documents, the date you received these
8 documents, and see if they wish to intervene in this action and
9 take any protective measures with respect to these documents.

09:38:31

10 Do you have any problem doing that?

09:38:48

11 MS. IAFRATE: I do not have any problem doing that,
12 Your Honor. I think, I think that that would be prudent.

13 THE COURT: All right. Any objection by anybody if I
14 order Ms. Iafrate to do that?

15 MR. YOUNG: None from plaintiffs, Your Honor.

09:38:59

16 MR. WALKER: No objection, Your Honor.

17 MR. McDONALD: None, Your Honor.

18 MR. COMO: I have none, Your Honor.

19 THE COURT: All right. Other issues that you have,
20 Ms. Iafrate.

09:39:08

21 MS. IAFRATE: I do have other issues regarding --
22 regarding that production. I received a call from Chief Girvin
23 yesterday very concerned regarding the release of these
24 documents to others rather than the monitors, and I advised
25 them that I was ordered to do so by Your Honor in --

09:39:27

1 THE COURT: And you were.

2 MS. IAFRATE: -- docket 1032. So --

3 THE COURT: No, no, you clearly were. I hadn't
4 anticipated that you had a document dump like this, so you're
5 right, I did make that order.

09:39:40

6 MS. IAFRATE: So the monitors have received documents
7 well before plaintiffs, because we were given the opportunity
8 to then review them and Bates stamp them and get them in order
9 to send them out to plaintiffs as well as the other attorneys.
10 There is a hard drive that has over two terabytes of data dump
11 on it in sub-folders.

09:39:59

12 THE COURT: Are these the alleged CIA documents?

13 MS. IAFRATE: Yes. This has --

14 THE COURT: Let me ask, are you -- and I'm sorry to
15 interrupt you -- are you able to segregate what the alleged CIA
16 documents are from other documents that were prepared by
17 Mr. Montgomery?

09:40:16

18 MS. IAFRATE: To a point, Your Honor. This hard drive
19 is the one that's most troubling, and I think that it -- I
20 think that the monitors would agree that it would be the most
21 troubling, not only the content that's on this hard drive is
22 personal in nature to hundreds of thousands of alleged victims
23 of identity theft, but also to duplicate it and get it in a
24 process that would be usable for plaintiffs and other attorneys
25 would require weeks of effort on the part of our third-party

09:40:33

09:40:58

1 vendor, and each shot would be approximately \$87,000.

2 So the paper and the thumb drives and the other
3 information that has been provided to us, we have pushed that
4 out to plaintiffs, but this hard drive that I believe is
5 concerning -- and I won't speak for Chief Girvin, but he
6 expressed concern, too -- this is the bulk of the data dump
7 that I think that we should be most cautious about.

09:41:22

8 THE COURT: All right. Let me -- well, does anybody
9 have anything else they want to say before I venture some
10 thoughts?

09:41:42

11 It seems to me that we can do this. In addition to
12 the concern that the monitor raised, he's also indicated to me,
13 at least based on a rough initial look, that there are clearly
14 documents in that file that are very relevant to this
15 litigation. And I believe that the plaintiffs have to have a
16 chance to look at that, and I guess -- so I don't want to
17 prevent them from looking at those things, but I see your point
18 that, you know, this data dump -- whether it's real, whether
19 it's false, whether it's partly real, partly false -- may be
20 very large, and may have lots of information.

09:42:01

09:42:24

21 Does anybody object if I have my monitor coordinate
22 with Ms. Iafrate in terms of attempting to characterize
23 documents that you have in your possession, but I -- I guess
24 I'll just say just set them aside until the monitor coordinates
25 with Ms. Iafrate, looks at them, determines if their --

09:42:46

1 determines what their contents is in general, can disclose to
2 you what their content appears to be in general, and then you
3 can determine, or we can all determine in these status
4 conferences, what parts of that larger document file, if any,
5 are relevant to the ongoing proceeding here. And that will not 09:43:11
6 prevent you from looking at other documents that are not part
7 of that file.

8 Does that work for you, Ms. Iafrate?

9 MS. IAFRATE: Yes, Your Honor. However, just to
10 complicate matters, I think that there are duplications from 09:43:31
11 the paper documents that have been provided --

12 THE COURT: Already?

13 MS. IAFRATE: Already, and there is some data dump in
14 those documents as well.

15 THE COURT: All right. Well, I think -- I think, and 09:43:43
16 tell me if you object to this, to the extent that you've
17 already done paper documents and put Bates stamps on them that
18 have been disclosed, we will let the plaintiffs look at those
19 subject to the protective order I just entered, which is they
20 are not to release them without order of this Court. 09:43:59

21 And then I guess I'm going to ask you, Ms. Iafrate,
22 would you please, unless you have an objection to doing so,
23 copy all counsel -- and the Court -- on your letter to -- or on
24 your communication, whatever it is, to counsel for the Central
25 Intelligence Agency? 09:44:23

1 MS. IAFRATE: Your Honor, I feel comfortable copying
2 you. I need to think about whether I can be as candid as I
3 would like to be if you're ordering me to also provide it to
4 plaintiffs' counsel.

5 THE COURT: All right. Well, is there an issue you
6 want to talk to me about at sidebar on this?

09:44:37

7 MS. IAFRATE: No, I'm just thinking out loud, Your
8 Honor, that this is a very sensitive matter that relates to CIA
9 intelligence, and potentially Mr. Montgomery's motive or
10 technique. I'm just concerned that --

09:44:53

11 THE COURT: Well --

12 MS. IAFRATE: -- I'd like to be as candid as possible,
13 but I'm in an adversary position with plaintiffs' counsel as it
14 relates to my client.

15 THE COURT: Mr. Young?

09:45:06

16 MR. YOUNG: Well, Your Honor, plaintiffs have no
17 interest in receiving sensitive information that isn't relevant
18 to this case. If it is relevant to the case, obviously, we
19 would be interested in it, and your suggested -- the Court's
20 suggested procedure to have the monitor make that
21 determination, or make it with the plaintiffs -- with the
22 defendants is fine with.

09:45:21

23 THE COURT: All right. Then I'm asking you about the
24 letter. Do you care to receive the letter that Ms. IafRATE's
25 going to send to CIA counsel?

09:45:35

1 MR. YOUNG: If Ms. Iafrate thinks that she can write a
2 better letter that's more informative to the CIA without
3 copying us on it, we're fine not getting it.

4 THE COURT: All right. How about you, Mr. Como?

5 MR. COMO: I don't need to be copied on that letter,
6 Your Honor.

7 THE COURT: Mr. Walker?

8 MR. WALKER: Your Honor, I don't think I need to have
9 a copy, although I must say I'm confused by this whole
10 discussion, probably primarily because I'm hearing a lot of
11 this for the first time. But the letter --

12 THE COURT: You were here, sir, with all the rest of
13 us; you were here.

14 MR. WALKER: But to answer the Court's question
15 directly, I don't believe that I need to receive the letter.

16 THE COURT: All right. Well, you know, I think,
17 Ms. Iafrate, if you can't send it to the parties, I probably
18 ought not to receive it, either, but will authorize you to send
19 it to CIA counsel, ask you to retain a copy because it may
20 become relevant.

21 And it does seem to me -- and I think that if you
22 would, and you can refer to the minutes of this hearing, you
23 can tell the CIA in a letter that we have an ongoing hearing.
24 It's my determination that allegations are relevant to the
25 ongoing hearing, and we're going to proceed with this ongoing

09:45:49

09:46:01

09:46:11

09:46:28

09:46:41

1 hearing. So if it has interests that it wants to assert, it's
2 going to be too late if it tries to assert them three or four
3 weeks from now.

4 MS. IAFRATE: Well, Your Honor, would you like me to
5 relay a deadline for them? I mean, they're just going to be
6 made aware of this by my letter.

09:46:57

7 THE COURT: Well you can make them aware of it by the
8 letter and however else you want to do it. And perhaps if the
9 press is here they'll make them aware of it, too, but -- well,
10 I -- but we can't rely on that. And so you can tell them that
11 they should notify -- they should notify us within two weeks if
12 they want to assert any privilege.

09:47:19

13 MS. IAFRATE: Very well. I will let them know.

14 THE COURT: All right.

15 Anything else relating to those matters, if we have
16 the monitor work these matters through with plaintiffs'
17 counsel?

09:47:39

18 MR. YOUNG: Your Honor, there's one detail, and I'm
19 not sure whether Ms. Iaftrate is the right person or not, but we
20 did notice in the sealed order that was filed yesterday by
21 Judge Boyle that there were some interview transcripts that
22 were referred to in the correspondence which were not part of
23 that set of documents that was given to Magistrate Boyle, and
24 it would seem to us and it would be our assumption that as part
25 of the production of the documents that Your Honor ordered

09:47:59

09:48:17

1 to operate, I'm not going to say so unless the parties don't --
2 don't request the depositions and I think it's absolutely
3 necessary.

4 In conjunction with that, and I'm not sure how many
5 parties will have received this and how many parties will not 10:04:21
6 have received this, but I received a request for admission
7 pro hac vice from a Jonathan Alden Moseley. The reason I raise
8 it is he indicated that he had provided copies of this request
9 for admission to all parties of record. He also provided me a
10 letter with that request for admission pro hac vice. 10:04:46

11 There are some parts relating to confidential matters
12 pertaining to whether or not I would admit him to practice
13 here, and he requests that they, for the most part, be kept
14 confidential unless they need to be known, and I think I want
15 to honor that request. I don't see any reason that it -- that 10:05:08
16 it's relevant, but my concern is this.

17 Pursuant to Arizona rules, I admit somebody
18 pro hac vice only if I'm going to admit them as a party to a
19 particular action. Now, I have -- although there are a lot of
20 people here that are representing others, they are not parties 10:05:29
21 to the action. And Mr. Moseley I'm not sure -- well, he's --
22 he's provided inconsistent information, because in his
23 application he says -- I ask -- in his application for his
24 admission pro hac vice, he says I ask that the Court and the
25 parties consider that I, Jonathan Moseley, am not proposing to 10:05:57

1 actually participate in the conduct of this case, but merely to
2 sponsor the filing of an amicus curiae brief for Sheriff Joe
3 Arpaio by attorney Larry Klayman of Freedom Watch.

4 And then, in a letter dated the same date, he says
5 that he wants to enter an appearance on behalf of Dennis 10:06:16
6 Montgomery because he says without naming who, but it must
7 either be Sheriff Arpaio or Sheriff Sheridan, that one of the
8 witnesses doesn't know what they're talking about with respect
9 to some of the testimony he's heard that they issued about
10 Dennis Montgomery's work, and that he wants to correct the 10:06:35
11 record and answer any questions, and he will be happy to do
12 that however the Court deems best fit.

13 Now, he tells me that he's copied all counsel of
14 record. Have you all received this letter?

15 MR. YOUNG: Plaintiffs have not, Your Honor. 10:06:53

16 MS. IAFRATE: I have not, Your Honor.

17 MR. WALKER: I have not, Your Honor.

18 MR. COMO: I'm not aware of receiving it.

19 THE COURT: Well, my concern, I'll just say it, is I
20 know that Mr. Klayman is representing Sheriff Arpaio in the 10:07:02
21 D.C. Circuit action, and it seems to me that if he's trying to
22 represent, and he may be trying to represent Sheriff Arpaio
23 here, he says he is. But then he says he's trying to represent
24 Dennis Montgomery here, and he says that he's an associate with
25 Mr. Klayman in Freedom Watch. 10:07:22

1 Well, as I understand it, Freedom Watch is a special
2 interest law firm that's representing Sheriff Arpaio in another
3 action and cannot then take positions adverse to his
4 representation here.

5 So I have some real concerns about granting this 10:07:37
6 pro hac vice application. I will, if you haven't received this
7 application, copy it and provide it to all parties. But I
8 propose, unless anybody has an objection, that we set the
9 opportunity at our next status hearing for Mr. Klayman to
10 appear if he wishes to and seek to be admitted pro hac vice and 10:07:57
11 clarify who and what and why he wants to be admitted
12 pro hac vice; and how, if in fact he wishes to represent Dennis
13 Montgomery and be critical of testimony offered by the
14 defendants in this matter, he can do so without a conflict.

15 And that may be something, Ms. Iafrate, you may wish 10:08:14
16 to explore prior to that hearing. So I will make copies
17 available to all parties. I assume at least that that
18 indicates he's willing to be deposed in this matter if any of
19 the parties believe that that deposition would be beneficial.

20 I've already discussed with you some of my thoughts 10:08:38
21 about whether or not it wouldn't be worthwhile for you to talk
22 and see if there's ways to simplify this action in terms of
23 possible remedies, be they damages remedies to individual
24 plaintiffs, be they expansion of the relief that this Court is
25 entitled, and the scope of the injunction that needs to monitor 10:09:00

Exhibit 11

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Manuel de Jesus Ortega)
Melendres, et al.,)
)
Plaintiffs,) CV 07-2513-PHX-GMS
)
vs.) Phoenix, Arizona
) May 14, 2015
Joseph M. Arpaio, et al.,) 9:35 a.m.
)
Defendants.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE G. MURRAY SNOW
(Status Conference)

Court Reporter: Gary Moll
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Proceedings taken by stenographic court reporter
Transcript prepared by computer-aided transcription

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Deputy Monitor John Girvin
Deputy Monitor Sherry Kiyler
Deputy Monitor Raul Martinez
Ms. Cari Shehorn

P R O C E E D I N G S

THE COURT: Please be seated.

THE CLERK: This is CV 07-2513, Melendres v. Arpaio,
on for status conference.

09:35:06

Counsel, please announce your appearances.

MS. WANG: Good morning, Your Honor. Cecillia Wang of
the ACLU for plaintiffs.

THE COURT: Good morning.

MR. YOUNG: Good morning, Your Honor. Stanley Young,
Covington & Burling, for plaintiffs.

09:35:14

MR. BENDOR: Good morning, Your Honor. Josh Bendor,
ACLU of Arizona, for plaintiffs.

MR. POCHODA: Dan Pochoda, ACLU of Arizona, for
plaintiffs.

09:35:26

MS. IAFRATE: I thought the people on the phone were
going to announce, Your Honor. That's why I paused.

Michele Iafrate on behalf of Sheriff Arpaio. With me
is my law clerk, Cari Shehorn.

MR. WALKER: Richard Walker on behalf of the County as
I've defined in previous proceedings.

09:35:40

MR. McDONALD: Mel McDonald, limited appearance for
Sheriff Arpaio.

MR. COMO: Good morning, Your Honor. Greg Como on
behalf of former Chief Brian Sands.

09:35:53

1 MS. CLARK: Correct. That's why I would suggest that
2 we need you there, Judge Snow.

3 THE COURT: Well, it hasn't been scheduled yet. If I
4 can be there, I will be.

5 MS. CLARK: It will be very difficult for me to advise 10:12:27
6 him about how to answer in light of what you just said.

7 THE COURT: All right.

8 MS. CLARK: Thank you, Judge.

9 THE COURT: Uh-huh.

10 Now, I want to take up the application for admission 10:12:36
11 to practice pro hac vice of Mr. Jon -- oh, was there anybody
12 else who had anything to say on that?

13 I want to take up the application for admission to
14 practice pro hac vice of Mr. Jonathon A. Moseley. He called
15 and asked to appear telephonically. We authorized him to 10:12:52
16 appear telephonically but I did not hear him appear.

17 Are you there, Mr. Moseley? Mr. Moseley?

18 All right. Let me tell you my concerns, and I guess
19 I'm going to lay them out.

20 Ms. Iafrate, Mr. Moseley is affiliated with Freedom 10:13:11
21 Watch, which represents Sheriff Arpaio in another action in the
22 district court of -- or in the D.C. Circuit now, so he has an
23 attorney-client relationship with Sheriff Arpaio. Sheriff
24 Arpaio, and I believe Chief Deputy Sheridan, have both
25 testified in this action that the material they received from 10:13:35

1 Mr. Montgomery has been discredited, and I don't mean to put
2 words in their mouth but I think it's pretty clear they said
3 that on a number of occasions. At my invitation, I think
4 Sheriff Arpaio at one time called it junk. I mean, that was my
5 word but he said yes.

10:13:52

6 Is the sheriff -- are you withdrawing that testimony?

7 MS. IAFRATE: No, Your Honor, we're not withdrawing
8 it.

9 THE COURT: If that's the case, then it seems to me
10 like it's just not possible for Mr. Moseley, without creating a
11 conflict, to represent Mr. Montgomery in this action while
12 representing Sheriff Arpaio in another action and challenging
13 the validity of Sheriff Arpaio and Chief Deputy Sheridan's
14 statements about Mr. Moseley in this action. And Mr. Moseley's
15 not appearing, and so it is my determination that I'm going to
16 deny his petition -- or application for admission to practice
17 pro hac vice, because it seems to me that it would create a
18 conflict in this case.

10:14:04

10:14:29

19 MS. IAFRATE: Well, Your Honor, it's unfortunate that
20 Mr. Moseley is not here because this is his motion, not mine.

10:14:48

21 However, all that I can tell you is that within his pleading
22 papers they're saying that there is no conflict. I would like
23 to ask -- I was hopeful that Mr. Moseley would be on the phone
24 so that we could ask how could he say that. Without him
25 appearing to answer those questions, I just have -- I have no

10:15:06

1 understanding regarding whether there is a conflict or there is
2 not a conflict.

3 THE COURT: Well, I understand the position you're in,
4 but he's not here. We did authorize him to be here. You can
5 understand why I think there is an apparent conflict, despite
6 what he says. 10:15:23

7 I will say I've read his motion to intervene and I
8 don't think that's well taken. But, of course, I'm not going
9 to rule on it because I'm going to strike it because I'm not
10 going to allow his admission. I'm certainly not going to
11 prevent Mr. Montgomery from seeking to intervene if he wishes
12 to do so. But he has to do so through counsel that is not
13 going to create a conflict by his very appearance, and it
14 surely seems to me like Mr. Moseley does that. 10:15:36

15 So how about we do this? I'm going to deny
16 Mr. Moseley's application for admission to practice pro hac
17 vice without prejudice if he wants to appear and take it up.
18 But even if I admit him pro hac vice, we still have to then
19 deal with his motion to intervene, which strikes me, as I said,
20 to be a little bit problematic, anyway. But that's -- 10:16:12

21 Did you want to be heard on that, Mr. Young?

22 MR. YOUNG: I do want to be heard on the motion for
23 pro hac vice admission, Your Honor.

24 Our view is that the Court has the discretion and
25 should exercise that discretion to deny the motion for 10:16:31

1 additional reasons beyond what Your Honor has just stated, and
2 I'll state those on the record now since the motion may be
3 renewed.

4 Under Local Rule 83.1(b)(2), this is a discretionary
5 issue for the Court under United States versus Ries, 10:16:47
6 100 F.3d 1469 (9th Cir. 1996): "Where an out-of-state attorney
7 strongly suggests through his behavior that he will neither
8 abide by the court's rules and practices - thus impeding the
9 'orderly administration of Justice' - nor be readily answerable
10 to the court, the Judge may ... deny the pro hac vice 10:17:09
11 application." And here already, based on the filings that have
12 been made, it is our view that that likelihood exists.

13 I would refer first to Mr. Moseley's May 2nd letter,
14 which is attached to the Court's May 8 order. There is a
15 notation there that counsel of record were copied. As of May 10:17:28
16 8, I believe the Court asked counsel of record and none of them
17 had received it. We still have not received the letter. We
18 only have it because of the Court's order.

19 The letter also states that Montgomery was not engaged
20 in relation to this case; he was engaged to help research other 10:17:45
21 matters, not this case. We believe that statement by
22 Mr. Moseley is false. We won't get into the substance of that
23 for now but we believe it is not correct.

24 Mr. Moseley's May 2nd letter also says that his
25 appearance would be, quote, for the purpose of presenting 10:18:05

1 answers to the Court. That's also not true, because he
2 subsequently filed a motion to intervene. That's not just
3 providing information to the Court about the testimony of the
4 witnesses in the earlier hearing, but it's actually filing a
5 motion that's not anticipated or not mentioned in this letter.
6 So we believe that that letter by itself is indicative of
7 disruption and, frankly, the possibility of improper activity
8 if he were to be admitted.

10:18:23

9 Now, this has been -- some of this letter has been
10 later withdrawn, but I believe that you can't just make a
11 statement about something that's material to a matter before
12 the Court and just say, "Oh, sorry," later, and withdraw it
13 without even apologizing or offer much explanation.

10:18:51

14 THE COURT: Well, for what it's worth, Mr. Young, I
15 noted that he wanted to withdraw it -- he might want to
16 withdraw it, but I've attached it to my order and I'm not
17 withdrawing it from my order.

10:19:08

18 MR. YOUNG: And that's the reason why we're able to
19 see it ourselves, Your Honor.

20 There was also a sealed document which was
21 accompanied -- which accompanied the May 2nd letter, and as
22 Your Honor noted previously, that communication said that the
23 purpose of the filing by Mr. Moseley was to file an amicus
24 brief on behalf of Sheriff Arpaio. That statement has also
25 been withdrawn through a clarification paper that was filed

10:19:19

10:19:37

1 late yesterday, with some explanation that relates to what
2 apparently was a word processing error on the part of
3 Mr. Moseley, but there wasn't even an apology for that error.
4 And again you have a material misstatement in a document filed
5 in this court. And he hasn't even been admitted to appear in 10:19:57
6 this case yet, and I believe that just tells us that it would
7 not be a wise thing to have him admitted.

8 Even more seriously, although Mr. Moseley's letter
9 refers to a Virginia Supreme Court case relating to his earlier
10 suspension from practice for a period of six months in that 10:20:21
11 court, I believe looking at the Virginia Supreme Court decision
12 will disclose that there is a lot that has not been disclosed
13 to this Court, and the citation for it is 694 S.E.2d.

14 THE COURT: Wait. Give me that again.

15 MR. YOUNG: 694 S.E.2d 586. And I have copies of the 10:20:43
16 decision if you would like to see them.

17 THE COURT: Yes, please provide copies.

18 MR. YOUNG: Now, what happened in the Virginia case
19 that caused Mr. Moseley's suspension was that there was a key
20 document with an arbitration clause which was not disclosed 10:21:15
21 prior to a hearing by Mr. Moseley.

22 At the hearing, and this is what Mr. Moseley does not
23 say, according to the Virginia Supreme Court, on
24 cross-examination Mr. Moseley's client admitted that he had
25 given a copy of that document to Mr. Moseley, and that that 10:21:34

1 contract did contain an arbitration clause, which would make
2 the action that Mr. Moseley had filed improper. So the courts
3 in Virginia decided, well, that's not proper behavior, and they
4 suspended him for that.

5 In addition, the Virginia court noted -- and this is 10:21:54
6 also omitted from Mr. Moseley's letter to you -- the court
7 found that Mr. Moseley filed in excess of 80 pleadings and
8 motions in the case and used abusive discovery tactics and
9 filed frivolous pleadings.

10 The court also found that Mr. Moseley wrote letters to 10:22:14
11 the adverse party that were unprofessional and intended to
12 intimidate and harass. And Mr. Moseley stated that the judge
13 in that case issued an absurd decision, was a wacko judge who
14 he believed was bribed, and he believed that opposing counsel
15 were demonically empowered. 10:22:36

16 The Virginia Supreme Court then said the following,
17 quote: "Moseley clearly made derogatory statements about the
18 integrity of the judicial officer adjudicating his matters, and
19 those statements were made either with knowing falsity or with
20 reckless disregard for their truth or falsity." Now, that's 10:22:56
21 information that we believe is highly relevant to any
22 application by Mr. Moseley to appear in this case.

23 Your Honor has already noted the conflict issue.
24 Mr. Moseley's clarification statement filed yesterday says,
25 quote: "Neither Dennis L. Montgomery nor his counsel are 10:23:20

1 adverse to Sheriff Arpaio, his deputies, the Cold Case Posse or
2 the MCSO in any respect." We believe that for the reasons that
3 Your Honor has already noted, and for other reasons in some of
4 the documents that have been produced, which I won't go into,
5 that statement also is false.

10:23:41

6 So for making all these false statements to the Court,
7 and for the behavior that led him to be suspended in the
8 Virginia bar, we believe that any application for pro hac vice
9 appearance in this case by Mr. Moseley should be denied.

10 THE COURT: Thank you. Ms. Iafrate.

10:23:56

11 MS. IAFRATE: Your Honor, I'll leave it to your
12 discretion. I do not advocate or have any opinion regarding
13 what Your Honor should do regarding the admission pro hac vice.

14 THE COURT: Mr. Como?

15 MR. COMO: I have no position on this issue, Your
16 Honor.

10:24:12

17 THE COURT: All right. Then I'm going to deny the
18 application, and if he wants me to move to reconsider he can do
19 that, but the application is denied.

20 The last matter, and I have some fairly important
21 things to say here, and I think we've all recognized that this
22 is a very unusual case with permutations that are new, and I've
23 decided to handle this in this way. I have ordered the
24 defendants to produce certain documents, and I believe that
25 they have been doing so. Among those documents are the

10:24:21

10:24:53

1 documents that are apparently a data dump of some kind by
2 Mr. Montgomery to MCSO. And then in addition to those
3 documents there are other documents about what I will call the
4 Seattle operations with Mr. Montgomery that are not data dumps.

5 Last week I ordered Ms. Iafrate to contact the CIA 10:25:20
6 since I think at least it was Chief Deputy Sheridan's
7 understanding, that I think has been confirmed by some of the
8 documents that I've seen, that at least Mr. Montgomery claims
9 that some of these documents were taken from the CS -- or the
10 CIA. And again, I don't know whether that's true or not, but 10:25:38
11 we've given the CIA another week to come lay any claim to any
12 sort of protection it wants.

13 And so I'm going to order the parties, at least with
14 respect to those documents that are the Montgomery data dump,
15 do not disclose them in any way. I'm not saying you can't look 10:25:55
16 at them. If you choose to, look at them all you want, but
17 don't disclose them to anybody else. And that will give the
18 United States another week in which to act if it wishes to do
19 so. I've been credibly informed that they're aware of your
20 letter. 10:26:16

21 MS. IAFRATE: That's good to know, Your Honor.

22 I have a piece of information that I would like to
23 share with you also when it's my time.

24 THE COURT: Go ahead.

25 MS. IAFRATE: I have heard that the CIA is aware of 10:26:27

1 the letter, and I filed a notice just so that you saw that the
2 letter actually did get sent out.

3 Yesterday I was contacted by phone several times, and
4 then by e-mail, from two people that said that they were part
5 of the Department of Justice and they wanted the letter. 10:26:54

6 THE COURT: They wanted the letter you sent the CIA?

7 MS. IAFRATE: Correct. So I said -- I asked them if
8 they were representing the CIA and they said no. I asked them
9 if they had authority from the CIA for me to give them the
10 letter, if there was someone that I could talk to. They said 10:27:13
11 no. I said I feel uncomfortable providing you with this letter
12 if I don't have someone from the CIA saying that you have
13 authority.

14 Your Honor, this is all new territory to me. They
15 didn't write me a letter requesting it. And when I asked 10:27:29
16 specifically regarding whether they had authority on behalf of
17 the CIA, they said no.

18 THE COURT: Well, let me just say isn't it a good
19 thing we live in a country where there's a separation of
20 powers? And I've told everybody, every party here, you can 10:27:43
21 hang on to the documents, and nobody's going to be taking those
22 documents. You're going to have them. They may be under some
23 sort of protective order. We will proceed in an orderly
24 fashion. So --

25 MS. IAFRATE: Well, Your Honor, the reason -- 10:28:02

1 THE COURT: -- why don't you just direct them, if they
2 wish, to come to a proceeding or contact the Court or the
3 Court's monitor.

4 MS. IAFRATE: Very well.

5 THE COURT: Okay.

10:28:10

6 We have had issues, apparently, lately with the
7 County, Mr. Walker, about the County not being sure -- the
8 monitor has made requests to try and follow the financial trail
9 about payments that may have been made to Mr. Montgomery,
10 payments that may have been made to MCSO folks, and travel
11 costs and hardware costs and software costs that may have been
12 expended on this operation.

10:28:28

13 The folks at the County are not really sure about
14 whether or not they have such documents, in response to the
15 monitor's request. Let me just throw something out there and
16 see if the parties can live with it.

10:28:46

17 Because we've had some past dealings with Sandi Wilson
18 in this case, I know she knows where the budgets are and where
19 things are kept if the County has them. Is there any problem
20 if the monitor contacts Ms. Wilson about where or not -- where
21 these documents may be found if they are in the possession of
22 the County?

10:29:05

23 MR. WALKER: Your Honor, I have no problem with
24 Ms. Wilson speaking directly with the monitor as long as I or
25 someone from my office can also be present.

10:29:23

1 If I could just elaborate a little bit, I think the
2 problem is the way expense documents are filed. And what I
3 understand is they're filed by a vendor name. So if the office
4 management -- office management and budget is looking -- is
5 looking for a document, say one of my bills, and they know the 10:29:50
6 name of my firm, that's fairly easy. If they don't know the
7 name of the vendor it's like looking for a needle in a
8 haystack.

9 So the only problem I think we have is there's a
10 degree of coordination that needs to happen between 10:30:10
11 Ms. Wilson's office and the Sheriff's Office so that we have
12 the information we need so that a meaningful search for the
13 documents can be conducted.

14 THE COURT: I think that's understandable and the
15 monitor can coordinate that with Ms. Wilson, with you, with 10:30:25
16 Ms. Iafrate, and whoever's handling document production at the
17 sheriff's Office. If we can set up those meetings and avoid
18 problems, it sounds like a great solution.

19 Any problem with that, Chief?

20 CHIEF WARSHAW: No, sir. 10:30:45

21 THE COURT: Okay. Now, I'd like to talk about how
22 we're going to go forward in light of these new documents.
23 There are a great number of them, even excluding the data dump.
24 And my monitor has had a chance to look at several of them but
25 far from the totality. 10:31:03

1 He has shown me several, 50 or so documents, that
2 cause me great concern. And I acknowledge that we're all
3 plowing new ground here. But I'm going to say what those
4 documents show, and I'm going to say that it is a concern that
5 I expect the MCSO to address in the resumption of our May
6 hearing, and I'm going to propose how we proceed.

10:31:23

7 The documents that I have seen pertain to what appears
8 to be some of the activities of the Seattle operation we
9 involve Dennis Montgomery as a confidential informant. The
10 documents seem to reveal that as at least part of their
11 operations, the Seattle operatives attempted to construct an
12 alleged conspiracy that supposedly involved this Court; one of
13 this Court's former law clerks; Eric Holder, the attorney
14 general of the United States; Lanny Breuer, the Chief Deputy
15 Attorney General of the United States in charge of the criminal
16 division; Phil Gordon, the mayor of Phoenix; and Brian Sands,
17 the executive chief of the MCSO. The purpose of the alleged
18 conspiracy was apparently to covertly investigate the MCSO and
19 deprive the sheriff and the MCSO of the due process of law in
20 this particular case and in a related case brought against the
21 sheriff by the DOJ.

10:31:43

10:32:02

10:32:22

22 This Seattle operation work product seems to purport
23 that by allegedly using a database of information harvested by
24 the CIA and confiscated by him, Mr. Montgomery was able to
25 reproduce fragments of e-mails that had been sent in 2009 and

10:32:40

1 2010 between persons within the Department of Justice, Mayor
2 Gordon, and Brian Sands.

3 As it pertains to this Court, the Seattle operation
4 work product, which was apparently prepared and revised over a
5 number of months, not a few, it began apparently -- the first 10:32:56
6 contact was in September of 2013. There were meetings in
7 December. These documents began being created in December and
8 January, and at least their properties indicate that they have
9 been revised many times over a period of substantial months.

10 Anyway, the documents purport to track telephone calls 10:33:15
11 between this Court, Eric Holder, Lanny Breuer, and Dennis Burke
12 to reproduce those phone calls which occurred years earlier.
13 And between the Court and one of its former law clerks, who
14 apparently allegedly was supposed to have served as this
15 Court's liaison with the Department of Justice regarding this 10:33:35
16 case.

17 The documents appear to allege or suggest that this
18 Court had contact with the Department of Justice about this
19 case before the Court was ever assigned to it. It further
20 seems to suggest that when Judge Murguia recused from this 10:33:48
21 case, the random selection process of this Court was subverted
22 so that the case was deliberately assigned to this Court. The
23 documents further suggest that thereafter this Court had
24 conversations with Eric Holder and Lanny Breuer about this
25 case, and it also alleges that this Court issued an order to 10:34:05

1 tap the MCSO's phones after being assigned as the judge in this
2 case.

3 It also seems to allege that this Court had
4 conversations, as I've indicated, with the Department of
5 Justice, through one of its former law clerks as an
6 intermediary.

10:34:19

7 Now, I will tell you I've looked at these documents
8 closely and I think there are a great deal of problems with
9 them. But I don't intend to put them on the screen and go over
10 those problems because I believe that Sheriff Arpaio and
11 Chief Sheridan have both acknowledged that the materials
12 received from Montgomery are not credible and/or are junk. So
13 I'm not presuming at this point that the MCSO is alleging that
14 anything the documents contain in this respect are true.

10:34:35

15 If, Ms. Iafrate, you're going to assert that, I will
16 tell you that I'm going to require good faith assertions that
17 any of that information is true, and I have a number of
18 questions that you will have to respond to. Nevertheless,
19 assuming, as I do, that the sheriff and Chief Sheridan both
20 will say that those documents are not credible, the very
21 existence of these documents in the MCSO's files causes this
22 Court some concerns.

10:34:53

10:35:16

23 In addition to their tendency to suggest that previous
24 testimony offered in this matter may have been untruthful, the
25 Court wonders why, when the MCSO should have been spending

10:35:33

1 their time, money, and resources in implementing its order,
2 they were funding a confidential informant as well as three
3 MCSO deputies or posse members to be in Seattle, Washington,
4 and other places, accruing overtime, travel, and salary
5 expenses, as well as significant technology costs, attempting 10:35:51
6 to construct some bogus conspiracy theory to discredit this
7 Court.

8 The Court notes that as of the monitor's last report,
9 the MCSO was only 29 percent in compliance with the injunctive
10 order entered a year and a half ago, approximately the same 10:36:06
11 time as this Seattle operation began. There may be some
12 explanation for all of this, I realize that these are only
13 documents in MCSO's file, but I'm going to require you to
14 address that in the hearing that's coming up in June.

15 I also want to say that when upon the death -- I think 10:36:25
16 before I began questioning Sheriff Arpaio, I explained to him
17 why I was questioning about these things and how I viewed this
18 as being relevant to the contempt hearing, and I think it's
19 relevant for reasons I've already stated. But when upon the
20 death of Deputy Armendariz it became clear to the Court that 10:36:46
21 the members of the plaintiff class in this case may have been
22 commonly subjected to deprivations not previously disclosed at
23 or prior to trial, and that this information as well as a great
24 deal of additional information sought prior to trial had never
25 been provided, this Court suggested to the MCSO that it arrange 10:37:02

1 for an independent investigation of these matters. Rather than
2 do so, the MCSO elected to conduct a self-investigation through
3 its own Professional Standards Bureau.

4 This Court's orders were violated at the very start of
5 that investigation, and that is part of the notice contempt. 10:37:19

6 And even though many of the allegations of misconduct arose --
7 that were at issue in the Armendariz investigation arose from
8 the conduct of the HSU, the MCSO transferred in as the new
9 captain of the Professional Standards Bureau the previous
10 captain of the special investigation divisions -- Special 10:37:37
11 Investigations Division, which was over the HSU.

12 There is evidence that before his transfer to the PSB,
13 Captain Bailey was sent an inquiry memoranda regarding seized
14 identifications from within the HSU, which memorandum and
15 documents were subsequently sent for destruction. Further, the 10:37:56
16 Special Investigations Division had responsibilities for
17 operations like the Seattle operation and would likely have
18 played a role in the Grissom inquiries.

19 Of course, Captain Bailey was supervised at both the
20 SID and the PSB by Chief Deputy Sheridan and by Sheriff Arpaio. 10:38:14

21 The Court has held repeated hearings regarding its concerns
22 about the inadequate investigations conducted by the PSB of
23 these matters. There is evidence that the PSB accepted
24 facially inadequate explanations for the confiscation of
25 identifications of the members of the plaintiff class. There 10:38:31

1 is evidence that such seizure practices existed
2 department-wide. There is further evidence that the MCSO
3 failed to adequately investigate and evaluate the seizure of
4 items of value from members of the plaintiff class, attempted
5 to destroy relevant evidence and manipulate internal and 10:38:46
6 independent investigations to exonerate those whom it may have
7 wished to clear, or to mitigate any possible discipline.

8 This evidence may thus tend to demonstrate that the
9 MCSO attempted to keep all matters pertaining to this case, its
10 speculative investigations into this Court, and to the 10:39:05
11 investigations triggered by the unfortunate death of Deputy
12 Armendariz, in the hands of a relative few people who may not
13 have been working to implement this Court's order in good
14 faith.

15 Further, it may tend to demonstrate that contemptuous 10:39:18
16 actions that have been noticed by this Court in its order to
17 show cause hearing were part of a pattern of knowing defiance
18 rather than inadvertence. This may affect necessary remedies
19 for members of the plaintiff class in civil contempt. It is
20 for these reasons that the Seattle operations materials may be 10:39:35
21 relevant to this action.

22 Nevertheless, the Montgomery materials are
23 considerable, and they have only been reviewed in small part.
24 When they are reviewed in more complete detail, it may suggest
25 other potential problems in the operations of the MCSO that are 10:39:54

1 beyond the scope of this contempt hearing and that I have no
2 intent to raise in this contempt hearing except to the extent
3 that it bears some relation to it. I do not want to lose the
4 focus of obliging the MCSO to comply with its orders and to
5 cure the existing and admitted contempts that have impaired for 10:40:14
6 a very long time the rights of the plaintiffs' class.

7 I'm going to set forth my proposed solution to this
8 problem, and I will hear your comments on it if you have
9 suggestions. I remind the parties that because of the
10 cooperation you made in the first week of the hearing where we 10:40:35
11 both -- where we were questioning witnesses at the same time,
12 we made substantial headway towards ending the hearing, and it
13 seems to me we shouldn't lose the focus on what the hearing is
14 about, recognizing that there now are other matters that may be
15 relevant. 10:40:56

16 But when the Armendariz investigation came forth I
17 made it clear, and it's on the record, and we have several
18 orders that supplement the monitor's original investigative
19 authority with his investigative authority to ensure the
20 integrity, the adequacy of MCSO's investigative operations. He 10:41:12
21 has authority to investigate all matters pertaining to this
22 contempt hearing and to the MCSO self-investigations in the
23 previous orders.

24 I propose, and I am likely to order, that based upon
25 his ongoing review of the documents provided, that he be 10:41:36

Exhibit 12

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Manuel de Jesus Ortega)
Melendres, et al.,)
)
Plaintiffs,) CV 07-2513-PHX-GMS
)
vs.) Phoenix, Arizona
) July 20, 2015
Joseph M. Arpaio, et al.,) 11:03 a.m.
)
Defendants.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE G. MURRAY SNOW
(Status Conference)

Court Reporter: Gary Moll
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Proceedings taken by stenographic court reporter
Transcript prepared by computer-aided transcription

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A P P E A R A N C E S

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Also present: Chief Robert S. Warshaw, Monitor
Commander John Girvin, Deputy Monitor
Chief Raul Martinez, Deputy Monitor
Sheriff Joseph M. Arpaio
Chief Deputy Gerard Sheridan
Executive Chief Brian Sands
Lieutenant Joseph Sousa
Deputy Chief John MacIntyre

P R O C E E D I N G S

THE COURT: Please be seated.

THE CLERK: This is civil case number 07-2513,
Melendres v. Arpaio, on for status conference.

11:03:26

MR. YOUNG: Good morning, Your Honor. Stanley Young,
Covington & Burling, for plaintiffs.

THE COURT: Good morning.

MR. BENDOR: Good morning. Josh Bendor, ACLU of
Arizona, for plaintiffs.

11:03:40

MR. POCHODA: Dan Pochoda, ACLU of Arizona, for
plaintiffs.

THE COURT: Good morning.

MS. IAFRATE: I was waiting for those on the phone,
Your Honor.

11:03:48

THE COURT: Well, why don't we take everybody present
in the courtroom, and then we'll take those on the phone.

MS. IAFRATE: Very well. Good morning. Michele
Iafrate on behalf of Joseph Arpaio and the alleged non-party
contemnors.

11:03:59

THE COURT: Good morning.

MR. MASTERSON: Good morning, Judge. John Masterson
and Joe Popolizio for Sheriff Arpaio.

THE COURT: Good morning.

MR. WALKER: Good morning, Your Honor. Richard Walker

11:04:08

1 and Charles Jirauch on behalf of that portion of the Maricopa
2 County government consisting of the Board of Supervisors, the
3 county manager, and the employees who work under their
4 supervision.

5 THE COURT: Good morning.

11:04:20

6 MR. MITCHELL: Good morning, Judge. Barry Mitchell
7 and Lee Stein specially appearing on behalf of Chief Gerard
8 Sheridan.

9 THE COURT: Good morning.

10 MR. McDONALD: Good morning, Your Honor. Mel McDonald
11 making a special appearance on behalf of Joe Arpaio.

11:04:32

12 THE COURT: How are you different, Mr. McDonald, from
13 Mr. Masterson and Mr. Popolizio?

14 MR. McDONALD: I'm sorry, I can't hear you.

15 THE COURT: How are you different from Mr. Masterson
16 and Mr. Popolizio?

11:04:43

17 MR. McDONALD: They are on the civil end working with
18 Ms. Iafrate, I am solely on the potential issue at the end of
19 the case, so we're playing different roles.

20 THE COURT: All right. Even though you're from the
21 same law firm?

11:04:55

22 MR. McDONALD: Even though we're from the same firm.

23 THE COURT: Okay.

24 MR. COMO: Good morning, Your Honor. Greg Como
25 representing Brian Sands.

11:05:07

1 MR. WOODS: Terry Woods, Your Honor. I represent the
2 nonparties Tom Liddy and Christine Stutz.

3 MS. HAMILTON: Good morning, Your Honor. April
4 Hamilton, Ridenour Hienton, representing non-party Maricopa
5 County Attorney's Office.

11:05:20

6 MR. OUIMETTE: David Ouimette, specially appearing for
7 Deputy Chief MacIntyre, who is also here.

8 MR. EISENBERG: Good morning, Your Honor. David
9 Eisenberg, specially appearing on behalf of Lieutenant Joseph
10 Sousa, who is present.

11:05:31

11 THE COURT: Good morning.

12 MS. CLARK: Good morning, Judge. Karen Clark, ethics
13 counsel for Tim Casey.

14 THE COURT: Anyone else present in the courtroom?

15 MR. KLAYMAN: Yes, Your Honor, Larry Klayman. I
16 submitted a pro hac vice application on Friday.

11:05:43

17 MR. GOMEZ: Good morning, Your Honor. My name is
18 Raphael Gomez. I represent the United States.

19 THE COURT: Please approach a microphone, Mr. Gomez.

20 MR. GOMEZ: Good morning, Your Honor. My name is
21 Raphael Gomez. I'm an attorney with the Department of Justice
22 and I represent the United States. Item number 4 addresses, of
23 the Court's status conference today addresses the subject of
24 review and -- copying and review of the documents, which I'll
25 refer to as the Montgomery documents, and if the Court had

11:06:08

11:06:34

1 questions, I'm available today. That's why I am present.

2 THE COURT: All right. Thank you.

3 MR. GOMEZ: Yes.

4 THE COURT: Anyone else?

5 All right. Those who are on the telephone?

11:06:48

6 MS. WANG: Good morning, Your Honor. Cecillia Wang of
7 the ACLU Immigrants' Rights Project. Andre Segura and I are
8 here appearing telephonically for the plaintiff.

9 THE COURT: All right. Good morning. Anyone else?

10 MS. KIMMINS: Good morning, Your Honor. Lynnette
11 Kimmins and Rosaleen O'Gara, specially appearing nonparties
12 from the U.S. Attorney's Office.

11:07:08

13 MR. CASTILLO: This is Jorge Castillo with MALDEF on
14 behalf of the plaintiff.

15 THE COURT: Anyone else?

11:07:24

16 All right. I do note the presence of the monitor and
17 the Monitoring Team in the jury box. The monitor's in the
18 witness box. This is one of their weeks of regular quarterly
19 review and investigation and they are present.

20 We have a number of items to take up that I ordered
21 for the status conference today. Since that time, the parties
22 have filed motions to stay -- a motion to stay, which has been
23 fully briefed. Nobody requested oral argument. I've reviewed
24 the pleadings and I'm prepared to rule and explain my reasons
25 therefor. I might have a question or two to the parties

11:07:44

11:08:06

1 regarding that motion to stay. I think we ought to rule on it
2 first. Basically, last week the movants --

3 Now, Mr. Popolizio, are you and Mr. Masterson on
4 behalf of the -- I'm not taking oral argument on this but I
5 have a few questions. Are you here on behalf of the movants or 11:08:27
6 are you here on behalf of the defendants?

7 MR. POPOLIZIO: I'm here on behalf of Sheriff Arpaio.
8 This is a joint motion for stay.

9 THE COURT: Well, wait a minute. Are you here
10 representing the defendants or are you here trying to represent 11:08:41
11 Sheriff Arpaio separately?

12 MR. POPOLIZIO: Today both, Your Honor. Jerry
13 Sheridan is on this motion also.

14 THE COURT: I know. Are you representing any of the
15 alleged non-party contemnors other than Sheriff Arpaio and 11:08:53
16 sheriff -- or Deputy Chief Sheridan?

17 MR. POPOLIZIO: Well, I represent the defendants
18 civilly, Your Honor.

19 THE COURT: All right. Then I'll note that you filed
20 last week a motion for stay, which basically said you disagreed 11:09:08
21 with my ruling on the motion to recuse -- not a big surprise --
22 and that you asked that I enter a stay based upon that
23 disagreement and the importance of the issue to this case. You
24 didn't cite any legal authority, and you didn't say why this
25 met with the legal authority. 11:09:29

1 Plaintiffs, in their response, filed legal authority,
2 and you, in your reply, then apparently accepted that authority
3 and joined the argument.

4 Normally, of course, we don't consider replies,
5 arguments raised in reply that weren't raised in the motion, 11:09:44
6 and so I'm inclined not to consider yours, except for I do
7 think that it's an important issue in this case.

8 Number one, whether you have made a strong showing
9 that you're likely to prevail on the merits, with all due
10 respect, I entered a 40-page order. And while I appreciate 11:09:59
11 that your motion is filed in good faith, I developed in great
12 detail why I think the motion does not have any merit, let
13 alone any likelihood of success. That doesn't mean I think
14 your motion is brought in bad faith. The Ninth Circuit can do
15 what the Ninth Circuit will do and I respect that and 11:10:16
16 acknowledge it, but I do not think that you've shown a strong
17 likelihood of success on the merits.

18 Number 2, whether the applicant will be irreparably
19 injured absent a stay. Well, as you do note, in fairness, the
20 supplemental injunctive relief has been largely affirmed by the 11:10:34
21 Ninth Circuit Court of Appeal, 784 F.3d 1254. Your clients
22 have twice admitted to being in contempt of my order. Sheriff
23 Arpaio has admitted to being in contempt in all three aspects
24 of the notice of contempt, and sheriff -- Deputy Chief Sheridan
25 has admitted to being in contempt of two of them. 11:10:53

1 And the matters of interest, particularly pertaining
2 to the Montgomery investigation, which is the only thing that
3 we might go forward on in addition to the other things that
4 your client was supposed to provide but hasn't, which is what
5 required the continuation of the contempt hearing in the first 11:11:07
6 place, I think they're going to be of interest to whoever the
7 presiding judge is, whether it's me or whether it's another
8 judge. The attitude and the documents revealed -- and of
9 course, the whole story hasn't been told, and I'm not assuming
10 that it has been told. I've invited your clients to provide an 11:11:25
11 explanation for those documents and I haven't made any
12 decisions about them. But it does seem to me that what they
13 suggest is going to be worth exploration, and so I can't see
14 how your clients will be injured absent a stay.

15 Whether the stay will substantially injure the other 11:11:45
16 parties in the litigation, Mr. Young has set forth that these
17 are constitutional violations identifying and compensating
18 members of the plaintiff class whose rights were deprived by
19 your client will be more difficult the longer this goes on. I
20 think that's almost undeniable. And it's certainly undeniable 11:12:02
21 and certainly suggested that -- or at least there have been
22 facts which would suggest that your own client and the MCSO
23 have not taken adequate steps to deal with the Armendariz
24 investigation and matters that have been revealed as a result
25 thereto. 11:12:22

1 I certainly agree with you that the public interest
2 does stand in favor of the impartiality of the judiciary, and
3 that that's an important consideration. But the public
4 interest also stands in favor of not having judges be
5 manipulated in favor of going forth with proceedings that have
6 already been going on for years and bringing an end to
7 litigation.

11:12:44

8 So as I look at all those factors and as I analyze
9 Nken, which apparently you acknowledge is the correct
10 authority, your motion to stay is denied, and you may
11 proceed -- I would also note that you asked me to evaluate a
12 motion to stay based on a writ of mandamus that you haven't
13 filed yet. It's very difficult for me to make such an
14 evaluation, but based on the matters you put in your reply I've
15 given them substantive consideration.

11:13:00

11:13:17

16 Is there anything else you wanted to say on that
17 matter?

18 MR. POPOLIZIO: Just one thing, Your Honor. I know
19 that you're not granting oral argument, but I just wanted to
20 bring to the Court's attention --

11:13:27

21 THE COURT: Would you please approach the microphone?

22 MR. POPOLIZIO: I know Your Honor is not granting oral
23 argument. You were clear on that, and I'm just going to bring
24 to the Court's attention that there was a case that I found
25 over the weekend, and that case's name is Fiore versus Apollo

11:13:42

1 Education Group. It was Judge Wake's decision on a situation
2 very similar to this with a brother-in-law who was an equity
3 partner in another firm on a firm that was before Judge Wake.

4 And he did side with your analysis and he cited you as
5 authority, but in that decision that I did not know about on 11:14:04
6 Friday when we filed the reply, that's why I'm bringing this to
7 the Court's attention, he wrote the Advisory Committee with
8 regard to the Advisory Opinion No. 58, and the Committee came
9 back and stated that it was grounds for recusal.

10 I just wanted to bring that to the Court's attention 11:14:24
11 so that could become part of the record that I realize that
12 this case existed -- exists now, but did not on Friday.

13 THE COURT: Well, I do think to some extent your
14 motion reflects a misunderstanding of my order. Back when we
15 dealt with this three years ago, I believe that my 11:14:39
16 determination was that my brother-in-law has no substantial
17 interest, based on the facts set forward. And that sort of
18 cuts out the Advisory Committee Note, although I did note that
19 the Advisory Committee Note violates the rule. And the better
20 legal authority, including the Pashaian case out of the Second 11:14:59
21 Circuit, says as much.

22 I have not, by the way, said that you waived any
23 argument as it pertains to (b) (4), but as to (b) (1) you have
24 waived, and the authority is clear on that point.

25 I appreciate your providing me the supplemental 11:15:14

1 authority. I didn't know about it, either. If you want to
2 file any supplemental briefing, you can certainly do that. But
3 I will tell you in advance that the advisory opinion and what
4 the Advisory Committee does on this point is not going to
5 change my mind about something that we ruled on three years
6 ago. But you can file a supplemental brief if you wish.

11:15:30

7 MR. POPOLIZIO: I understand that, Your Honor, and
8 thank you for that opportunity.

9 THE COURT: All right. Thank you.

10 The motion for definition of -- oh, I do expect -- the
11 Monitoring Team is here, and I have lifted the stay, and I
12 expect all of the defendants and all of the movants to fully
13 and completely comply with the document requests that have
14 already been made, those clear back in February that have not
15 yet been complied with, those made in May that have not yet
16 been complied with, and the investigative requests of the
17 monitor. And I will be available if enforcement or
18 disciplinary action needs to be taken, but I don't anticipate
19 that that will be necessary.

11:15:41

11:16:01

20 Motion for definition of plaintiff class. That was
21 your motion, I believe, was it not, Mr. Walker?

11:16:18

22 MR. WALKER: Yes, Your Honor. And with the Court's
23 permission, I'd like Mr. Jirauch to address that issue.

24 THE COURT: Has Mr. Jirauch entered an appearance in
25 this matter?

11:16:40

1 MR. JIRAUCH: I have, Your Honor.

2 THE COURT: All right. Well, Mr. Jirauch, I would ask
3 you to address documents 480, 488, and 489 in your oral
4 argument. And I will tell you what those documents are so
5 you're not completely out at sea, because I realize that many 11:16:53
6 of you don't have much history in this case.

7 Back in 2011, December of 2011, parties filed motions
8 for summary judgment, and before I heard summary judgment I
9 asked the parties to provide supplemental briefing, and the
10 supplemental briefing I asked them to address: What good faith 11:17:15
11 legal basis is there, if any, for MCSO to assert that it has
12 the authority going forward to enforce civil violations of the
13 federal immigration law?

14 The plaintiffs put forth a brief which set forth the
15 law as it has since been reaffirmed that you had none, and even 11:17:33
16 your own client in his supplemental brief indicated that he had
17 none, and so I entered the preliminary injunction as it
18 pertained to your client's ability to attempt to enforce civil
19 violations of the federal immigration law even if they had
20 knowledge that somebody was in the country without 11:17:54
21 authorization if they didn't have any basis to charge the
22 person based on state law. So to the extent that you have
23 argued, to the extent that Ms. Iafrate or Mr. Masterson has
24 argued, that the class doesn't include those people, I want to
25 know why it doesn't. They clearly fall within the definition 11:18:12

1 of the plaintiff class.

2 So to the extent you're trying to say that I'm
3 expanding the plaintiff class, I'm not; to the extent that
4 you're asserting that in some way this was not an issue that
5 was anticipated by the evidence, well, summary judgment was 11:18:28
6 granted on this issue in 2011 before there ever was any
7 evidence.

8 So I guess I invite you to tell me how I am expanding,
9 or how -- and I haven't made any ruling on this point; I'm not
10 sure I have to make any ruling on this point -- but how I'm 11:18:44
11 expanding the plaintiff class.

12 MR. JIRAUCH: Well, Your Honor, due process requires
13 that parties be given notice of the claims that are going to be
14 asserted against them.

15 THE COURT: And you don't think I gave you notice 11:18:56
16 prior to ruling on --

17 MR. JIRAUCH: Well, Your Honor, I --

18 THE COURT: -- summary judgment allowing supplemental
19 briefing?

20 MR. JIRAUCH: -- I wasn't there, so I can't comment on 11:19:01
21 what happened. There is so much in this case that just getting
22 into it in the last 60 to 90 days neither I nor Mr. Walker had
23 familiarity with and we're just learning it. But based upon
24 the pleadings in the case, based upon the evidence at trial,
25 and based upon the ruling that Your Honor made, they're all in 11:19:15

1 the context of stops.

2 The language of the class definition refers to people
3 who are driving or sitting in a vehicle. "Sitting" obviously
4 is reference to the passenger in a car; otherwise, it makes no
5 sense in the context of a traffic stop. 11:19:36

6 The detention itself refers, I believe, in the context
7 of the evidence that was presented at the trial, refers to a
8 detention that occurs as a consequence of a pretextual stop
9 that's discriminating in nature. The stops that occur --

10 THE COURT: Are you arguing for an exception that 11:19:57
11 would swallow the whole class?

12 MR. JIRAUCH: I'm sorry, Your Honor?

13 THE COURT: Are you arguing for an exception that
14 would swallow the whole class?

15 MR. JIRAUCH: No, Your Honor. We're only trying to 11:20:07
16 say that as to people who are detained as a consequence of work
17 force enforcement actions they are not pretextual in nature,
18 first; they are as a consequence of search warrants and arrest
19 warrants that are issued by the judiciary, the state courts;
20 they are the consequence of having detained someone who is 11:20:24
21 Latino, and believed possibly to be in the country illegally;
22 the Sheriff's Office policy was, insofar as we know, was
23 enforced in all cases but possibly one, that they would talk
24 with ICE or the Border Patrol and inquire as to the individual
25 and whether they were in the United States illegally. 11:20:44

1 Only when ICE or the Border Patrol did a search of the
2 federal database and came back and advised the Sheriff's Office
3 that these individuals were in the United States illegally were
4 they retained at the request of ICE and the Border Patrol. At
5 no time did the Sheriff's Office exercise independent decision
6 making --

11:21:06

7 THE COURT: What about all the evidence I have that
8 says that that was Sheriff Arpaio's policy, in his own press
9 release, that the detention was a result of his policy?

10 MR. JIRAUCH: Well, the facts are and the evidence
11 that developed -- all I can talk to is what the evidence was in
12 the United States versus Arpaio, because that case I have been
13 involved in for some period of time and I have familiarity with
14 it.

11:21:17

15 THE COURT: Which case is that?

11:21:32

16 MR. JIRAUCH: Pardon?

17 THE COURT: Which case is that, the --

18 MR. JIRAUCH: That's --

19 THE COURT: -- one in front of Judge Silver?

20 MR. JIRAUCH: That's the one that's before Judge
21 Silver.

11:21:37

22 THE COURT: Well, what doesn't -- I mean, with all due
23 respect, you might have knowledge about that; I don't.

24 MR. JIRAUCH: I understand that.

25 THE COURT: But I do understand that Judge Silver has

11:21:42

1 adopted all of the rulings that I made in this case in that
2 case, has she not?

3 MR. JIRAUCH: I believe not as to work force
4 enforcement.

5 THE COURT: Yeah, there is no issue --

11:21:51

6 MR. JIRAUCH: Right.

7 THE COURT: -- pertaining to that, except to the
8 extent that you might have detained them in motor vehicles
9 afterwards.

10 MR. JIRAUCH: That's right.

11:22:02

11 THE COURT: I don't presume that she otherwise did
12 that, so what's your point?

13 MR. JIRAUCH: I was trying to respond to Your Honor's
14 comment that Judge Silver had adopted all the rulings here, and
15 I understood that --

11:22:12

16 THE COURT: Oh, okay.

17 MR. JIRAUCH: -- that was not the case as to the work
18 force enforcement proceedings, so that was my only point.

19 THE COURT: Okay.

20 MR. JIRAUCH: The other issue I'd like to make, Your
21 Honor, is the plaintiffs don't contest the issues. They didn't
22 raise the one that Your Honor now has raised, and so -- in
23 their briefing, so we're not prepared to respond to that.

11:22:19

24 THE COURT: Which issue?

25 MR. JIRAUCH: The issue that there was summary

11:22:34

1 judgment --

2 THE COURT: Oh --

3 MR. JIRAUCH: -- given on the basis of --

4 THE COURT: -- on the 480, 489, 488 --

5 MR. JIRAUCH: Right, I --

11:22:39

6 THE COURT: That's fine, because I guess I'm going to
7 have a question for the plaintiffs now, if you're through,
8 which is: Why do I have to rule on this one way or another as
9 long as you get the discovery you're looking for? Mr. Young?

10 MS. IAFRATE: Your Honor, just a point of
11 clarification. I also filed the motion regarding this issue.

11:22:50

12 THE COURT: You know, it wasn't logged as a motion. I
13 viewed it as a joinder. I did see that you filed something.
14 But it wasn't logged as a motion and wasn't cited as a motion.

15 Did you want to address something, Ms. Iafrate?

11:23:04

16 MS. IAFRATE: I would, Your Honor.

17 THE COURT: All right. Do you want to address the
18 questions I asked Mr. Jirauch?

19 MS. IAFRATE: Yes, in part.

20 THE COURT: Okay.

11:23:13

21 MS. IAFRATE: I will not reiterate what was already
22 discussed.

23 THE COURT: All right.

24 MS. IAFRATE: Your Honor, in my motion, or whatever
25 it's called, I discuss the elements of 23(b). I'm not going to

11:23:24

1 reiterate all of those. I know that you have read it. The
2 questions that you asked regarding Mr. Jirauch deal with what
3 authority did Sheriff Arpaio have to enforce immigration laws,
4 and that is a case that I have pending in another court -- it's
5 actually next door in Judge Campbell's court -- and it deals
6 with Puente v. Arizona. There's --

11:23:49

7 THE COURT: Well, again, I'm talking only about this
8 case.

9 MS. IAFRATE: I understand, Your Honor --

10 THE COURT: What I'm doing is --

11:23:58

11 MS. IAFRATE: -- but you wanted to know what
12 authority.

13 THE COURT: -- addressing the argument that I believe
14 you made that this was never an issue when I certified the
15 class. It clearly was an issue because I asked about it, and I
16 asked for supplemental briefing before I certified the class.

11:24:04

17 And then when I certified the class -- and this was
18 also in the motion for summary judgment -- I asked for this as
19 it particularly pertained for the motion for summary judgment
20 and if -- unless I misread it, plaintiffs clearly said you had
21 no authority, and I think you conceded that you had no
22 authority under the state of the existing law to detain persons
23 without authorization based only on the belief that they'd
24 violated civil immigration law. So that was very much an issue
25 in this case at that time --

11:24:21

11:24:37

1 MS. IAFRATE: Your Honor, even --

2 THE COURT: -- and that's why I asked the question.

3 MS. IAFRATE: I understand, Your Honor. Even
4 plaintiffs didn't realize that it was an issue in this case
5 because they subsequently filed Puente v. Arizona that deals 11:24:45
6 with 13-2008 and 13-2009, which is the identity theft statutes
7 that Sheriff Arpaio had authority in order to investigate based
8 on valid search warrants at the workplace locations.

9 So in response to your question to Mr. Jirauch, that
10 was the authority that was being relied on, and subsequent to 11:25:07
11 your motion for summary judgment ruling, subsequent to your
12 certification of the class, the recertification of the class,
13 plaintiffs themselves, the ACLU, filed that lawsuit because
14 they did not believe that those individuals were subject to
15 this class action. 11:25:24

16 THE COURT: All right. Well, I'll ask plaintiffs
17 about that, and I don't know to what extent you want me to take
18 judicial notice of issues that are involved there in some sort
19 of a complex argument, but let me ask you this, Ms. Iafrate.

20 A lot of this related to plaintiffs' request that they 11:25:39
21 receive the identifications which I think, as I recall,
22 Lieutenant Jakowinicz testified that he had made the
23 enumerations not only of people they turned over to Border
24 Patrol that had resulted from their own operations, HSU's
25 operations in terms of -- oh, I don't know what the word would 11:26:01

1 be, but traffic stops; and they'd also made the enumeration of
2 persons that had been turned over to Border Patrol but not
3 charged as a result of workplace enforcement raids that had
4 been in motor vehicles.

5 Plaintiffs asked for that information as a matter of 11:26:15
6 discovery, and whether or not Maricopa County is going to be on
7 the hook for violating workplace raid detentions folks that
8 were subsequently taken to Border Patrol, I did order that it
9 was relevant and should be provided.

10 Have you provided that information to plaintiffs? 11:26:30

11 MS. IAFRATE: I do not believe I have, Your Honor.

12 THE COURT: All right. Is there any reason why at
13 this point I have to rule one way or another on Mr. Walker's
14 motion and your motion?

15 MS. IAFRATE: Yes, Your Honor. To define the class 11:26:40
16 and to --

17 THE COURT: Well, the class has already been defined a
18 long time ago. The question is: Are folks involved in
19 workplace enforcement members of the class, and why should I
20 rule on that before I've heard the evidence? 11:26:56

21 MS. IAFRATE: That's exactly the point, Your Honor.
22 No evidence was ever heard regarding this subset that we're now
23 referring to.

24 THE COURT: By all means, we've got a whole second
25 round of a hearing. Do you want to present evidence on that 11:27:06

1 case?

2 MS. IAFRATE: I do not, Your Honor, because I want
3 that to be addressed in the case that's more fully set forth in
4 Judge Campbell's court next door.

5 THE COURT: Well, you can make whatever motions you
6 want to make, but in the meantime you need to provide that
7 discovery. Anything else? 11:27:16

8 MS. IAFRATE: Your Honor, the reason that I did not
9 provide that previously, first of all, this issue needed to be
10 presented. We did not file a reply and then the stay was put 11:27:31
11 in place. So that's the reason that we have not provided it to
12 the plaintiffs.

13 I can tell you that during the time where I believed
14 that there was a full stay in place we continued to gather
15 documents and prepare them to be processed, so they will be 11:27:48
16 processed expeditiously.

17 THE COURT: Thank you.

18 Mr. Jirauch?

19 MR. JIRAUCH: Your Honor, I can --

20 THE COURT: Can I get you to a microphone, please? 11:27:57

21 MR. JIRAUCH: Your Honor, I'm hesitant to begin
22 talking about the record in this case since there's a very
23 little part of it that I'm intimately familiar with. But I did
24 look at Your Honor's order with respect to the class
25 definition, and it was -- it was entered pursuant to Rule 11:28:16

1 23(b)(2), which is related only to injunctive and declaratory
2 relief, not damages.

3 What clearly is happening --

4 THE COURT: Well, I think that there is a point there,
5 which was what I was just about to ask Mr. Young, and which is 11:28:28
6 why I'm reluctant to rule now to determine one way or another,
7 and that is simply this.

8 It seems to me that your client is in contempt -- he's
9 already admitted he's in contempt; there were all kinds of
10 enforcement operations -- and people are entitled to 11:28:44
11 compensation as a result of contempt, they're not entitled to
12 damages as a result of contemptuous behavior. And so it seems
13 to me that I have to decide what's the difference between
14 compensation because your client violated their constitutional
15 rights and damages because your clients violated their 11:29:06
16 constitutional rights.

17 I'm not sure, for the reasons I've just said to
18 Ms. Iafrate and to you, I have to make that determination right
19 now. But I am pretty sure that the identities of those folks
20 are relevant, at least for purposes of discovery, and that's 11:29:21
21 why I've ordered Ms. Iafrate to disclose them.

22 Do you understand what I'm getting at?

23 MR. JIRAUCH: Yes, Your Honor, I fully understand.
24 Fully understand.

25 Could I make one correction?

11:29:32

1 THE COURT: Sure.

2 MR. JIRAUCH: I believe Your Honor said that my
3 client, the sheriff.

4 THE COURT: Oh, you're right; you're Maricopa County.

5 MR. JIRAUCH: And so I don't want to, by my silence -- 11:29:45

6 THE COURT: Well, let me just say --

7 MR. JIRAUCH: -- suggest --

8 THE COURT: You know, we'll --

9 MR. JIRAUCH: Not that I would have objection to that,
10 but it's -- 11:29:45

11 THE COURT: I'm sorry. I understand that you are
12 Maricopa County.

13 MR. JIRAUCH: Yes, Your Honor.

14 THE COURT: But it seems to me that Maricopa County
15 requested the Ninth Circuit to reconsider its ruling and it 11:29:51
16 didn't do it, so you're on the hook for whatever Sheriff Arpaio
17 may have done that's wrong.

18 Do you contest that?

19 MR. JIRAUCH: We may, Your Honor, but at this point
20 I'm certainly not prepared to argue that issue. 11:30:02

21 THE COURT: And if you're going to contest that, where
22 are you going to contest it, the United States Supreme Court?

23 MR. JIRAUCH: I don't know the answer to that at this
24 point, Your Honor, but that's certainly an issue that will be
25 considered. 11:30:16

1 THE COURT: All right. But it's my understanding, and
2 you can correct me if I'm wrong, that the mandate did issue by
3 the Ninth Circuit Court of Appeals.

4 MR. JIRAUCH: It did.

5 THE COURT: And so I'm bound by what -- the
6 Ninth Circuit Court of Appeals.

7 MR. JIRAUCH: I agree with that.

8 THE COURT: All right. Thank you.

9 MR. JIRAUCH: You're welcome, Your Honor.

10 THE COURT: Mr. Young, I don't know if you were going
11 to argue this or Mr. Bendor was, but here's my question. I
12 mean, I'm not sure that, for reasons I've already said, that I
13 have to rule one way or another on this issue at this point.
14 But I will tell you that when it gets down to it, it seems to
15 me that the case law requires me to differentiate between
16 compensation and damages when I'm talking about -- when I'm
17 dealing with the results of a civil contempt.

18 Do you understand where I'm coming from?

19 MR. YOUNG: Your Honor, Rule 71 of the Federal Rules
20 of Civil Procedure does give this Court the power and does give
21 people who were injured by the violation of the injunction the
22 ability to compensate for and deal with the consequences of
23 that violation.

24 And as to Your Honor's question, I don't think you
25 need to rule anything now at this point about the class

11:30:23

11:30:31

11:30:45

11:30:58

11:31:14

1 definition. That was done a long time ago, it's already been
2 ruled on, the class definition says what it says, and as long
3 as Your Honor has ruled on the discovery issue, that's really
4 the only thing that needs to be ruled on at this point. And as
5 I understand it, Your Honor has ruled that the discovery on the 11:31:33
6 workplace raid people, and we're going to talk about other
7 issues that go outside the narrow group of people that the
8 plaintiffs want -- that the defendants want to produce evidence
9 on, as long as those discovery issues are resolved, I think the
10 issues of compensation remain to be determined after the 11:31:50
11 further hearing that Your Honor is going to set.

12 THE COURT: All right. Thank you. I have ruled on
13 the discovery issue, and as I understand what Ms. Iafrate told
14 me, she has compiled and collected those documents and is ready
15 to provide them, now that I've lifted the stay. 11:32:08

16 Mr. Jirauch. Can you grab a microphone, please?

17 MR. JIRAUCH: I'd like to say something very quickly.

18 THE COURT: Sure.

19 MR. JIRAUCH: I do want to respond to the argument
20 with respect to Rule 71. It is simply a procedural mechanism 11:32:23
21 that allows the Court to enter. It's not a basis --

22 THE COURT: All right. I'm not going to make any
23 rulings on 71 until later.

24 MR. JIRAUCH: I do have a more substantive point I'd
25 like to make. 11:32:36

1 THE COURT: All right.

2 MR. JIRAUCH: This is being presented on the part of
3 people who are not parties to this action, people who -- these
4 are not members of a class. They are not plaintiffs in this
5 law --

11:32:45

6 THE COURT: Doesn't that remain to be seen, whether
7 they're members of the class?

8 MR. JIRAUCH: At this point in time they are not
9 members of the class.

10 THE COURT: Why? Weren't they transported in a motor
11 vehicle within Maricopa County and they were detained in a
12 motor vehicle?

11:32:51

13 MR. JIRAUCH: Your Honor, we've presented our
14 arguments why we believe that the definition that you've just
15 cited doesn't cover people under these circumstances where the
16 evidence will show that the only reason that they were
17 transported is that they were instructed by ICE to do so on the
18 basis of their reviewing the federal database, with one
19 exception. And that doesn't fall within --

11:33:01

20 THE COURT: Do you think that ICE can countermand an
21 order of this Court? Is that what --

11:33:17

22 MR. JIRAUCH: No.

23 THE COURT: -- you're saying?

24 MR. JIRAUCH: No, I'm not saying that at all. I'm
25 saying that Your Honor's order is given in the context of

11:33:24

1 pretextual traffic stops. This is not a pretextual traffic
2 stop. It is also based upon the decision to --

3 THE COURT: I've already heard all of this, with all
4 due --

5 MR. JIRAUCH: Oh.

11:33:40

6 THE COURT: -- respect, Mr. Jirauch.

7 MR. JIRAUCH: Okay, Your Honor.

8 THE COURT: What's your point?

9 MR. JIRAUCH: I've made my point.

10 THE COURT: All right. Thank you.

11:33:45

11 MR. JIRAUCH: Thank you.

12 THE COURT: Motion to compel.

13 Ms. Iafrate, I think this is you, although you might
14 turn it over to Mr. Masterson.

15 You did file a response on 543 and said that was
16 complete and no discipline was imposed, is that correct?

11:33:55

17 When I say "543," I'm referring to your internal
18 investigation number.

19 MS. IAFRATE: I understand.

20 THE COURT: And in May you filed a response to
21 plaintiffs' motion to compel in which you said 543 was
22 complete.

11:34:14

23 MS. IAFRATE: Yes.

24 THE COURT: And I assume, since no discipline was
25 imposed, nobody has appealed.

11:34:25

1 MS. IAFRATE: That's correct.

2 THE COURT: And a copy has been provided to all
3 parties?

4 MS. IAFRATE: Yes.

5 THE COURT: And that is the case in which, though your 11:34:31
6 independent investigator, Mr. Vogel, recommended or found
7 violations, Captain Olson, for some reason, found that no
8 discipline was appropriate?

9 MS. IAFRATE: No major discipline, correct.

10 THE COURT: All right. Chief Warshaw, it was -- 11:34:50
11 pursuant to the November order, I assigned you to investigate
12 and evaluate self-investigations done by the MCSO.

13 Have you had a chance to undertake 540- -- their
14 self-evaluation of 543 at this point?

15 CHIEF WARSHAW: We have taken a look at 543, Your 11:35:10
16 Honor. Due to the hiatus in actions of the Court recently,
17 we've not made any inquiry of the MCSO regarding people with
18 whom we'd like to speak to, specifically Chief Olson. So our
19 final report regarding our evaluation of 543 is not yet
20 complete. 11:35:35

21 As it pertains to 542, while we have some information,
22 at least as we understand it from representatives of the
23 County, that investigation is not fully completed.

24 THE COURT: Did 542 appeal? Is that going to be an
25 issue I need to rule on? 11:35:57

1 MS. IAFRATE: 542 is the one, I believe, that deals
2 with Mr. Armendariz.

3 No. Excuse me. 542 has been completed, Your Honor.

4 THE COURT: And has not been provided?

5 MS. IAFRATE: Correct, because there was major
6 discipline in that one, and the appeal time has run, and so it
7 will be provided.

11:36:12

8 THE COURT: All right. So I assume you'll do an
9 investigation --

10 CHIEF WARSHAW: We will, Your Honor.

11:36:22

11 THE COURT: -- or an evaluation of the
12 542 investigation.

13 CHIEF WARSHAW: Yes, we will. And we will be making
14 contact with representatives of MCSO so we can speak with
15 certain individuals to make our evaluation of those two
16 investigations comprehensible.

11:36:33

17 THE COURT: And I understand that one of those people
18 will be Captain Olson you need to --

19 CHIEF WARSHAW: Will be Chief Olson. We are certainly
20 concerned about the disparity between the ultimate findings,
21 certainly, in 543, as opposed to the preliminary findings, yes.

11:36:48

22 THE COURT: All right. Is Chief Olson available this
23 week?

24 MS. IAFRATE: May I have a moment?

25 THE COURT: If he's not --

11:37:02

1 MS. IAFRATE: I can usually get ahold of him, but this
2 wasn't anticipated or on the agenda, so I will check on his
3 availability and let the monitors know today.

4 THE COURT: Well, as it -- thank you.

5 As it relates to the other topic of the motion to 11:37:13
6 compel, one was 542. One was 543. There were two other
7 investigations, as long as we're on them, that Vogel was going
8 to complete and then he declined to complete and you had to
9 complete on your own. Are those complete?

10 MS. IAFRATE: Yes. 11:37:31

11 THE COURT: What numbers are those?

12 MS. IAFRATE: I'm sorry, Your Honor. I don't --

13 THE COURT: Know what they are?

14 MS. IAFRATE: -- have those numbers off the top of my
15 head. There are so many. 11:37:37

16 THE COURT: That's all right. They're completed?

17 MS. IAFRATE: They are.

18 THE COURT: And have they been provided to the monitor
19 and to the plaintiffs, and to the other parties?

20 MS. IAFRATE: I believe that they have, because they 11:37:44
21 were done expeditiously to beat the deadline. I believe that
22 they were provided prior to the stay.

23 THE COURT: Do you know one way or another?

24 CHIEF WARSHAW: Chief Kiyler indicates she believes,
25 at least. 11:37:55

1 CHIEF KIYLER: I know one has been provided for sure.
2 I'm not sure on the second one.

3 THE COURT: Can you contact Ms. Iafrate and confirm
4 whether or not we need any other investigations?

5 CHIEF KIYLER: Yes, sir.

11:38:16

6 MS. IAFRATE: We're going to see each other right
7 after this regarding PSB, so we will definitely work together
8 to make certain that they do have all of them.

9 THE COURT: Then the third topic on the motion to
10 compel had to do --

11:38:27

11 MR. SEGURA: Your Honor, this is Andre Segura. Sorry
12 for the interruption. I had planned to address this, with your
13 permission, over the phone.

14 THE COURT: Well, you can address it when I call on
15 you, Mr. Segura.

11:38:37

16 MR. SEGURA: Just to circle back before you read the
17 first category, I want to clarify one thing.

18 THE COURT: Mr. Segura, you can address it when I call
19 on you. Thank you.

20 MR. SEGURA: Yes, Your Honor.

11:38:48

21 THE COURT: With respect to the third object of the
22 plaintiffs' class, it had to do with, I believe, internal
23 investigations that involved racial discrimination, and you'd
24 objected to the overbreadth. Let me tell you what my concern
25 is on that.

11:39:11

1 I agree that it's overbroad to the extent it might
2 apply to races other than those involved in the plaintiff
3 class: Latino, Hispanic, and otherwise. But to the extent that
4 you suggest that the plaintiffs are only entitled to 2014
5 forward, I disagree, because one of the purposes of this 11:39:25
6 hearing is to figure out what appropriate remedial action is
7 appropriate in light of all of the material that existed that
8 was not provided to the plaintiff class prior to the underlying
9 lawsuit.

10 And if in fact that material suggests, as I think much 11:39:40
11 of it does, that there was a lack in internal investigation,
12 discipline, and complaint, one of the things I'm going to have
13 to do is figure out what remedial action is. And it seems to
14 me that to the extent that you have complaints involving
15 discrimination of members of the plaintiff class from 2008 11:39:58
16 forward, that is relevant to that consideration.

17 So I'll allow you to address that, Ms. Iafrate.

18 MS. IAFRATE: Well, Your Honor, the overbreadth also
19 deals with the type of complaint. So, for example, people in
20 detention file grievances and -- 11:40:19

21 THE COURT: You mean like in jail?

22 MS. IAFRATE: Yes.

23 THE COURT: Holding in jail?

24 Do you want to narrow that any, Mr. Segura?

25 MR. JIRAUCH: I'm sorry. Your Honor? 11:40:30

1 MR. SEGURA: Yes, we're -- we're agreeable to that, to
2 misconduct that occurs within the jails.

3 One concern that we do have is that we do know that
4 detention officers have also participated in patrol activities,
5 so as long as that, those investigations would also be 11:40:43
6 encompassed, that we would be amenable to excluding any
7 investigation of misconduct occurring solely within an MCSO
8 jail.

9 THE COURT: Does that help?

10 MS. IAFRATE: It helps, but I have a little bit 11:41:00
11 further --

12 THE COURT: Okay.

13 MS. IAFRATE: -- Your Honor.

14 THE COURT: Well, we'll take them one at a time.

15 MS. IAFRATE: That's fine. Your Honor, the rationale 11:41:05
16 behind my objection dealt with the mandate that -- well, the
17 potential mandate that has now been issued regarding tailoring
18 things narrowly to address the constitutional violations.

19 The way that I read the request, it was overbroad
20 dealing not only with the Fourth and Fourteenth Amendment, not 11:41:22
21 just the Hispanic race, and not just as it relates to traffic
22 enforcement, but the fact that they were doing a catch-all to
23 try to -- not try, that could potentially allow all IAs to be
24 reviewed, which I do not think satisfies the mandate of the
25 Court. 11:41:44

1 And in fact, the reason that I suggested that it start
2 at 2014 was because that was the time when Your Honor -- I know
3 that you don't like the word "expanded" -- but expanded the
4 monitor's abilities and powers to deal with IAs, which was
5 never part of this litigation or the OSC. It started becoming 11:42:06
6 an issue in this Court's eyes in 2014. And so that's why,
7 pursuant to the narrow mandate that has been issued, I would
8 argue that this exceeds the authority of this Court.

9 THE COURT: Well, I'd just point out -- to the extent
10 I understand what you just said, and I want to clarify it -- 11:42:30
11 that in 2014 that expanded mandate, if that's what you want to
12 call it, was issued with your full cooperation and opportunity
13 for input. Whatever objections you made or didn't make at the
14 time, you did or didn't make, but you'll recall that I put
15 forward an order, suggested order, I allowed -- and I said 11:42:46
16 we'll operate under this but I'll allow you to make suggestions
17 and revisions. You did. I incorporated those suggestions.

18 And it resulted from finding out that your client had
19 never implemented my preliminary injunction, and it resulted at
20 the same time finding documents that related to Captain Bailey 11:43:04
21 that apparently were put into property under a destruction
22 order, and it also resulted from other concerns related to
23 conflicts of interest in internal investigations. And I grant
24 you that all of those things are pretty unusual, but they do
25 require some sort of action to address them, and that's how we 11:43:25

1 address them.

2 And so to the extent that I understand your objection,
3 I certainly don't have any problem to the extent that you say
4 that plaintiffs are not entitled to all IAs; I agree they are
5 not. But I think they are entitled to all IAs that would 11:43:43
6 involve allegations of racial discrimination against any member
7 of the plaintiff class from 2008 forward.

8 Do you have any problem with that?

9 MS. IAFRATE: Yes, Your Honor, if I may just make one
10 more point. In 2014 I did object regarding this expansion. 11:43:55
11 One of the reasons, or rationales that you provided was that
12 the mandate had not yet issued.

13 THE COURT: Well, one of the last items I've added to
14 the agenda that I didn't put on the order because the mandate
15 had only issued the day before -- 11:44:15

16 MS. IAFRATE: Right.

17 THE COURT: -- I'll allow both parties to suggest what
18 is appropriate -- an appropriate revision to the supplemental
19 injunctive relief in light of the mandate. But as I read the
20 Ninth Circuit's order, it is that the power to look at internal 11:44:25
21 investigations ought to have relation to the plaintiff class.

22 MS. IAFRATE: Correct.

23 THE COURT: And I fully intend to implement that
24 order, both formally and informally. Before I issue any
25 change, I'll allow you to make suggested comments and I'll 11:44:41

1 allow the plaintiffs to do the same.

2 But it certainly seems to me that because the
3 plaintiffs filed their lawsuit in 2007 and the request is only
4 from information from 2008 forward, and I've just limited it to
5 members of the Hispanic or Latino culture or race, I've just
6 taken away your objection, have I not?

11:44:59

7 MS. IAFRATE: Well, Your Honor, I guess that as I'm
8 standing up here and we're changing ever so slightly -- to my
9 benefit, I understand -- the discovery request, I would ask
10 that either in your order regarding the status conference or
11 plaintiffs provide the language that I am to follow in doing
12 this discovery request so I don't have to guess and guess
13 wrong.

11:45:19

14 THE COURT: That's fine.

15 Will you please provide that update, Mr. Segura?

11:45:33

16 MR. SEGURA: Yes, and we're happy to -- to meet and
17 confer on this issue.

18 THE COURT: All right. Is there anything else you
19 wanted to say on this point, Mr. Segura?

20 MR. SEGURA: No, not on the -- on this category of
21 documents.

11:45:44

22 THE COURT: All right. Was there anything else in
23 your motion to compel that I haven't addressed?

24 MR. SEGURA: Yes, Your Honor. In our -- the first
25 category, documents relating to the four investigations

11:45:54

1 originally assigned to Mr. Vogel, we had also asked for all
2 versions or drafts of the reports, including e-mail
3 communications or other communications regarding that
4 investigation. This was in that footnote to our motion. It's
5 our understanding that at least one report by Mr. Vogel was 11:46:18
6 forwarded to MCSO and then returned with comments prior to its
7 completion, so we are interested in that information.

8 THE COURT: Any problem with that, Ms. Iafrate?

9 MS. IAFRATE: As long as I can get the cooperation of
10 the investigator, because he does not work for MCSO, he was 11:46:43
11 contracted, so I will make that request.

12 THE COURT: All right. Thank you.

13 Anything else, Mr. Segura?

14 MR. SEGURA: No, Your Honor. Thank you.

15 THE COURT: All right. Do we have any remaining 11:46:55
16 outstanding internal investigations that arose from Armendariz,
17 the Armendariz-Cisco Perez allegations within the MCSO?

18 MS. IAFRATE: One, Your Honor.

19 THE COURT: Which is?

20 MS. IAFRATE: It's 221, and that's the comprehensive 11:47:09
21 Armendariz investigation. It has been completed but it's on
22 review. It took over 25 people to work on it. It's 27
23 binders. It's very, very voluminous, but it has been
24 completed. This encompasses everything regarding Armendariz
25 except for his supervision, which was subject to another IA. 11:47:37

1 THE COURT: All right. And as soon as that's
2 completed, you'll provide it to the parties?

3 MS. IAFRATE: Correct.

4 THE COURT: Do you have an estimated date for me?

5 MS. IAFRATE: I do not, Your Honor.

11:47:47

6 THE COURT: Can you have one by the time of our next
7 status conference?

8 MS. IAFRATE: Yes.

9 THE COURT: Thank you.

10 DOJ's request to examine and copy the database of
11 documents given by Montgomery. We had a representative from
12 the Department of Justice here. Do you want to come forward
13 and tell us what your request is.

11:47:59

14 MR. GOMEZ: Yes, Your Honor. I believe on May 8th the
15 Court had issued an order to the defendants' counsel
16 instructing the defendants' counsel to contact the United
17 States; actually, the CIA general counsel's office. At that
18 point, we -- I'm an attorney in the Civil Division of the
19 Department of Justice in Washington, D.C., and we were
20 contacted, and pursuant to that instruction we had spoken to
21 defendants' counsel, and with the purpose of, since there had
22 been a representation made that documents contained in what
23 I'll refer to as the Montgomery documents were either documents
24 of the United States or documents that -- implied -- were
25 classified or sensitive.

11:48:25

11:48:46

11:49:15

1 Pursuant to that, the United States attempted to make
2 a -- or contacted the defendants' counsel to see if we can make
3 arrangements to copy and examine those documents to determine
4 whether they're classified or sensitive or otherwise the
5 property of the United States. We were unable to reach an 11:49:38
6 agreement, I guess, with the defendants' counsel, and we
7 contacted the Court-appointed monitor, Mr. Warshaw, and made
8 that request to him.

9 The United States does not know whether there are any
10 documents in the Montgomery files that are in fact classified 11:49:59
11 or sensitive, but there is a representation that there were
12 documents that were of the United States.

13 Pursuant to Mr. Warshaw and our discussion, we were
14 able to make -- reach an agreement that we would copy the
15 documents under the supervision of the Court-appointed monitor. 11:50:24
16 Essentially, we would -- I believe there are two Banker Boxes
17 of documents, and a hard drive that contains something like
18 200-some megabytes.

19 We would take and copy them at the FBI office and then
20 here in Phoenix, with court-appointed security officers from 11:50:45
21 Washington, who would take custody of the documents, and then
22 we would examine those documents in Washington.

23 And at that point, I believe there was a motion --
24 there was notification to the parties, there was a motion for
25 recusal, and it was -- that was suspended and -- 11:51:04

1 THE COURT: If I authorize you to receive such
2 documents for your examination, I assume that you would have no
3 objection if I order you not to disclose any of those documents
4 to any third party without further order of this Court.

5 MR. GOMEZ: That's correct, Your Honor. We would be 11:51:25
6 prepared to do that. However, if the documents contained
7 classified or sensitive information, we -- the review would be
8 conducted by the United States. There may be various entities
9 that may have to review it. We would have a central -- or
10 central entities that would conduct the review at its -- at the 11:51:45
11 beginning. If there was a need to contact other government
12 entities as part of the United States, then I assume that that
13 prohibition wouldn't preclude that kind of review.

14 THE COURT: It doesn't prohibit agents of the United
15 States reviewing the documents; it does prohibit any 11:52:05
16 dissemination to any third party.

17 MR. GOMEZ: The United States has no objection to
18 that, Your Honor.

19 THE COURT: All right. Any party object?

20 MS. IAFRATE: May I be heard, Your Honor? 11:52:19

21 THE COURT: You may.

22 MR. GOMEZ: Oh, one point, Your Honor. If we are
23 authorized to conduct the review, I would request the Court's
24 permission to either meet with the Court-appointed monitor,
25 Mr. Warshaw, today, or its designee, to make the arrangements. 11:52:33

1 Thank you.

2 THE COURT: All right.

3 MS. IAFRATE: Your Honor, I kept you abreast of this
4 situation when it was unfolding. You had ordered me to write a
5 letter to the CIA, which I did do and noticed the Court.

11:52:50

6 I then received a call from people that I did not know
7 that said that they were the United States and they were
8 entitled to those documents. I inquired whether they had the
9 permission of the CIA and they said no, but they were the
10 United States and they were entitled to them.

11:53:06

11 I did not feel comfortable giving documents -- I
12 objected, based on that rationale, that if these are indeed CIA
13 documents, then the CIA needs to be the one to say whether they
14 can be disclosed or not.

15 The other thing, Your Honor, that we discussed
16 previously, and it's your document 1086, was a procedure that
17 the monitor and I were going to perform in order to protect
18 some private information. Because the stay was implemented,
19 the Monitor Team and I never got around to performing that
20 procedure that would protect some of these people's bank
21 accounts, Social Security numbers, things of that nature. And
22 in fact, plaintiffs have some of these documents which you
23 told, You may look at, but please don't do anything with them
24 until we go through that procedure.

11:53:22

11:53:47

25 I would ask that if you were inclined to allow the

11:54:03

1 U.S. Attorney's Office to review these, that we would first be
2 allowed to go through that procedure for the sake of these
3 individuals' privacy interests.

4 THE COURT: Well, the United States would be subject
5 to the same protective order that plaintiffs are subject to;
6 they wouldn't be able to disclose any of that information
7 pending their review.

11:54:19

8 MS. IAFRATE: It is my understanding that despite
9 that, we would still perform that procedure that you requested
10 in document 1086 --

11:54:35

11 THE COURT: Have you taken any steps to do that in the
12 two months between the middle of May and now?

13 MS. IAFRATE: Well, actually, Your Honor, the document
14 says that the monitor was to coordinate and contact me, so, no,
15 we have not done anything in order to perform that.

11:54:48

16 THE COURT: All right. Any other objections?

17 MS. IAFRATE: No, Your Honor.

18 THE COURT: Anybody else wish to be heard?

19 MR. KLAYMAN: Your Honor, I don't know if you'll allow
20 me to be heard on my pro hac vice application, Mr. Klayman. I
21 represent Mr. Montgomery.

11:54:58

22 THE COURT: Well, let me tell you, Mr. Klayman, I did
23 receive your pro hac vice -- I don't know whether it's "vise"
24 or "veechay" application -- just before I took the bench. I
25 don't know whether you filed it Friday night or sometime today,

11:55:13

1 but I didn't get it till just now.

2 I have a couple of concerns. I have the concern that
3 you have the same conflicts that Mr. Moseley was subject to as
4 it pertains to your client, Mr. Montgomery, and the testimony
5 that we've already received from your client, Sheriff Arpaio,
6 and Chief Deputy Sheridan that I had outlined in denying his
7 admission pro hac vice. It seems to me like you're subject to
8 those same objections.

11:55:28

9 It also seems to me, and I don't want to be
10 precipitous on this, but some of the documents that have since
11 been disclosed raise at least the possibility that you yourself
12 might be a witness in this action, and so I'm a little
13 concerned to grant your admission pro hac vice without at least
14 allowing the other parties to be heard on it.

11:55:44

15 To the extent that you want to speak on behalf of
16 Mr. Montgomery, I will briefly allow you to do so as long as
17 you keep within the confines of ethics and propriety.

11:56:03

18 MR. KLAYMAN: Yes, Your Honor. May I address the
19 Bench --

20 THE COURT: You may.

11:56:17

21 MR. KLAYMAN: -- from the lectern?

22 THE COURT: You may.

23 MR. KLAYMAN: Thank you.

24 Let me deal with the issues that Your Honor raised
25 first.

11:56:27

1 THE COURT: No. You don't need to deal with them.
2 We're not going to address them now. I'm going to allow the
3 other parties --

4 MR. KLAYMAN: Well -- okay. That's fine.

5 THE COURT: You can talk to whether or not I allow the 11:56:35
6 Department of Justice to review the materials under seal that
7 Maricopa County has indicated that your client provided to them
8 indicating that it was material that he had taken from Central
9 Intelligence Agency as a result of their harvesting of
10 documents. 11:56:57

11 MR. KLAYMAN: Let me explain why I want to come in pro
12 hac vice.

13 THE COURT: No. You can address what I've just told
14 you you can address.

15 MR. KLAYMAN: Mr. Montgomery obviously opposes that 11:57:01
16 until such time as our appeal is heard by the Ninth Circuit.
17 We've appealed Your Honor not allowing us to intervene, and the
18 reason for that --

19 THE COURT: I didn't rule on your motion to intervene,
20 because I didn't allow -- 11:57:14

21 MR. KLAYMAN: Correct.

22 THE COURT: -- Mr. Moseley to appear.

23 MR. KLAYMAN: And that's the re --

24 THE COURT: Your client can hire any other attorney
25 that doesn't present the conflict that you and Mr. Moseley do. 11:57:20

1 MR. KLAYMAN: We submit, Your Honor, that we don't
2 have a conflict.

3 THE COURT: All right. Then I don't want to hear
4 that.

5 MR. KLAYMAN: All right. 11:57:30

6 THE COURT: I will hear it in due course when --
7 Did you provide your motion for admittance
8 pro hac vice to the other -- all the other --

9 MR. KLAYMAN: We did, Your Honor. We e-mailed it to
10 everybody and it's been served by mail. 11:57:43

11 THE COURT: All right. Then what I'll do is I will
12 hear that next status conference.

13 MR. KLAYMAN: That's fine, Your Honor, but we do
14 request that before that's heard, and if Your Honor should
15 grant it -- and I would like an opportunity to reply to that;
16 we just simply submitted the application pro hac vice -- that
17 you not release documents until such time as you make a ruling
18 on that, because Mr. Montgomery would like to renew his motion
19 to intervene to protect what he claims are his property
20 interests in those documents. 11:58:10

21 THE COURT: Well, the only testimony that we have in
22 this action is that those are documents that he -- I don't know
23 how to -- I don't want to use words other than Chief Deputy
24 Sheridan used, but those are documents that he took from the
25 CIA that the CIA was harvesting from American citizens. It 11:58:27

1 doesn't sound to me like he has any property interest in such
2 documents.

3 To the extent that he does have such property
4 interests, and to the extent that -- because there may be other
5 documents in there that are -- and, in fact, there may be no 11:58:42
6 documents taken from the CIA; that possibility has been raised
7 by the evidence. If that is so, how is he damaged by allowing
8 the United States of America to review and confirm that they
9 have no property interest in those documents? What property
10 interest does Mr. Montgomery have in such documents that would 11:58:59
11 in any way be infringed by allowing the United States to review
12 those documents under seal to make sure that they have no
13 security interest in them?

14 MR. KLAYMAN: We did submit with the motion to
15 intervene, as part of the various pleadings, a court -- and 11:59:13
16 we've cited it -- a court ruling in Nevada where the Department
17 of Justice was ordered to give documents back to
18 Mr. Montgomery.

19 THE COURT: And that was a 2006 ruling.

20 MR. KLAYMAN: That's correct. 11:59:26

21 THE COURT: Well, this case supposedly reconstructed
22 material from a database that pertained to alleged telephone
23 calls and e-mails that occurred in 2009 and 2010.

24 How does that Nevada 2006 ruling relate to any
25 database that alleges to have 2009-2010 documents in it? 11:59:44

1 MR. KLAYMAN: That's something that Mr. Montgomery
2 would like the opportunity to argue in front of this Court.

3 THE COURT: Well, I'm giving you the opportunity right
4 now.

5 MR. KLAYMAN: I don't have that information, Your
6 Honor. I don't have it. But we want an opportunity to, in a
7 systematic way, put forward a brief to this Court on that
8 issue.

11:59:54

9 THE COURT: And I think that you can have that
10 opportunity, but you need to explain to me now why any interest
11 that Mr. Montgomery might have in such materials is in any way
12 infringed by allowing the United States to review them under
13 seal to make sure that there are no secured documents that
14 belong to the CIA in those materials.

12:00:07

15 MR. KLAYMAN: Your Honor, I'm not taking a position on
16 that; I'm simply wanting an opportunity to brief it in the
17 ordinary course. And we came before this Court, and I don't
18 have any conflict with Sheriff Arpaio. We --

12:00:28

19 THE COURT: Well --

20 MR. KLAYMAN: -- we stated that we're not --

12:00:37

21 THE COURT: -- you may take your seat.

22 MR. KLAYMAN: -- taking any adverse position.

23 THE COURT: You may take your seat, because I've
24 already ruled on that. I'm going to allow the other parties to
25 address your renewed motion to intervene. But I would point

12:00:46

1 out that you also signed Mr. Moseley's motions and
2 Mr. Moseley's appeal. And I don't see how you're any different
3 than Mr. Moseley, and we will allow you the opportunity to be
4 heard to the extent that the other parties have an opportunity
5 to address it in an orderly fashion, which is not today.

12:01:01

6 MR. KLAYMAN: Your Honor, may I just say I did not
7 sign those pleadings. I was listed as Of Counsel but I never
8 signed those pleadings. Only Mr. Moseley signed the pleadings.

9 THE COURT: Okay. It looked to me like you'd signed
10 them, but I'm not saying you did. And we will give you the
11 orderly opportunity for your motion, or your pro hac vice
12 application to be heard, but an appeal to the Ninth Circuit
13 would take years, and I'm not going to hang up the review of
14 the United States in documents that your client may have
15 claimed to Chief Deputy Sheridan were procured from the CIA for
16 that period of time.

12:01:17

17 So thank you, and we will hear your motion when the
18 other parties have had a chance to address it.

19 MR. KLAYMAN: May I have an opportunity to reply to
20 that, because I --

12:01:30

12:01:46

21 THE COURT: Yes. In fact, if you don't have an
22 adequate time to reply, we'll schedule it for the next status
23 conference out, so that we can have a fair response, a reply, a
24 full opportunity to be heard on the point.

25 MR. KLAYMAN: Thank you.

12:02:00

1 THE COURT: In the meantime, I am going to grant the
2 United States' motion to review the documents that have been
3 provided. I am ordering the United States that while they have
4 the authorization to have government employees and agents
5 review the material, the material will be disseminated to no
6 third party under any condition without the prior approval of
7 this Court.

12:02:12

8 I'm going to further authorize the monitor to make
9 whatever arrangements are necessary to do a secured transfer of
10 such documents to the United States. I'm also going to
11 authorize a representative from the defendants to be present
12 during such transfer if they wish to be.

12:02:26

13 Anything else on that matter? All right.

14 Do you know, what are we going to do in terms of
15 MCS -- Maricopa County having independent representation from
16 Sheriff Arpaio? I don't question that you have the ability to
17 have separate counsel, if that's how you choose to pursue the
18 matter, but I'm not sure that you have -- I'm not sure, to the
19 extent --

12:02:49

20 Well, let me ask, Mr. Walker, are you taking the
21 position -- well, I think I've already spelled this out with
22 Mr. Jirauch. Are you taking the position that Maricopa County
23 is not going to be liable for any liability, if any, that
24 Sheriff Arpaio, Chief Deputy Sheridan, and the MCSO are
25 responsible for after the issuance of the mandate by the Ninth

12:03:07

12:03:25

1 Circuit?

2 MR. WALKER: To try to be clear on this, Your Honor,
3 in terms of financial responsibility, the Board of Supervisors
4 has the responsibility to fund costs associated with remedies
5 that are the result of this proceeding. That's a statutory
6 obligation under Arizona law.

12:03:48

7 We do take the position that because of the unusual
8 nature of the structure of county government under the Arizona
9 Constitution statutes, that the portion of the county
10 government that I represent -- that's the Board of Supervisors,
11 the county manager, and employees working under their direct
12 supervision -- do not have the kind of authority over the
13 actions of other constitutional officers, including the
14 sheriff, that make the County either legally liable for the
15 actions of the sheriff or in a position to control those
16 actions, so --

12:04:11

12:04:36

17 THE COURT: Well, I mean, you are legally liable for
18 them to the extent you're liable for damages and corrective
19 action, correct?

20 MR. WALKER: The financial responsibility, yes, that's
21 beyond question, and provided for clearly under Arizona
22 statute. And if I could --

12:04:50

23 THE COURT: But what you're saying is the County Board
24 of Supervisors can't issue directives to Sheriff Arpaio.

25 MR. WALKER: That's correct, Your Honor.

12:05:02

1 THE COURT: All right. So how does that result in
2 differences in terms of issues that are presented by this
3 contempt hearing?

4 MR. WALKER: Well, I think, Your Honor, our position
5 is that the County was not and is not in a position to control 12:05:17
6 or to have any direct effect on the decisions that are within
7 the province of constitutional officers under the constitution
8 and the statutes, and that includes the sheriff.

9 Now, I read the Ninth Circuit decision as essentially
10 saying -- ordering that the County be added as a party, but 12:05:44
11 then saying: If you have the County, you don't need the
12 sheriff. Well, I think the reverse is also true: If you have
13 the sheriff, you don't need the County. And I think the -- the
14 plaintiffs --

15 THE COURT: Well, that certainly seems to run contrary 12:06:05
16 to the court of appeals decision out of the Arizona Court of
17 Appeals, doesn't it, that was cited by the Ninth Circuit?

18 MR. WALKER: Well, I think the -- there actually is
19 quite a bit of authority to the contrary under -- in the
20 Arizona court system. 12:06:23

21 THE COURT: Even if what you say is true, Mr. Walker,
22 and it may be, do I have any authority to do anything different
23 once a mandate has been issued by the Ninth Circuit?

24 MR. WALKER: I don't see that the Court would be
25 precluded from concluding on the basis I just articulated, and 12:06:39

1 particularly given that the plaintiffs earlier in this
2 proceeding stipulated that the County is not a necessary party
3 for full and complete relief, that I don't see that the Court
4 would be precluded from concluding that with the sheriff in
5 this proceeding, the County is not a necessary party and
6 dismissing us out. 12:06:59

7 THE COURT: All right. Well, I guess I'll allow you,
8 to the extent you wish to, to continue to urge that. It seems
9 to me it's precluded by the Ninth Circuit ruling. But to the
10 extent you want to be here to represent whatever interests you 12:07:16
11 believe that the County may have that are separate, I'm not
12 going to allow you to delve into a whole lot of stuff that
13 isn't relevant to the contempt hearing, but I'll allow you to
14 be here to represent the County.

15 MR. WALKER: Thank you, Your Honor. 12:07:31

16 THE COURT: Thank you. While you're here, I did
17 respond, it wasn't really an order, but I responded with
18 thoughts relating to procedures on the independent review of
19 the monitor's billings. Were you able to read that?

20 MR. WALKER: Yes, Your Honor. 12:07:48

21 THE COURT: Do you have any thoughts about that? Have
22 you talked to the other parties?

23 I mean, truthfully, I don't have any huge objection --
24 except for I want to be sure that we operate ethically in
25 conjunction with all the parties -- I don't have any huge 12:07:59

1 objection if Ms. Wilson continues to review the detailed
2 confidential billings of the monitor, to the extent that that
3 isn't going to run the monitor a huge legal expense because the
4 County's trying to, you know, manipulate that process to get
5 some sort of a contract entered with the monitor. By the same 12:08:16
6 token, I want to be sure that the monitor and this Court's
7 orders are responsive to the County's fiscal concerns.

8 Have you explored with the other parties whether they
9 have objections to Ms. Wilson continuing to review the
10 monitor's confidential billings on an ex parte basis? 12:08:33

11 MR. WALKER: I have not, Your Honor, and the reason
12 being that we feel that as long as the County is a party, that
13 presents a bit of a problem, at least from an appearance
14 standpoint. We think that --

15 THE COURT: Well, I understand that. I accept it. 12:08:52

16 Have you thought about designating any non-CPAs that
17 might be less expensive?

18 MR. WALKER: Yes, Your Honor, and Ms. Wilson and her
19 people are working on identifying potential candidates for
20 that, and -- 12:09:09

21 THE COURT: All right.

22 MR. WALKER: -- we'll get back to the Court with a
23 proposal.

24 THE COURT: As I said, I'm open to any kind of
25 proposal that's workable to the parties, not expensive as 12:09:16

1 between, you know, raising all sorts of expense and
2 inefficiencies, but I am certainly amenable to work with the
3 County so that the County can fulfill its responsibility to the
4 taxpayers.

5 MR. WALKER: We appreciate that, Your Honor.

12:09:28

6 THE COURT: All right.

7 MR. WALKER: Could I just make a couple points?

8 One is in your order you suggested that there
9 currently is no contract, and that's not quite accurate. Under
10 the terms of the contract, if a new contract was not
11 negotiated, it fell back on the old terms, so there's an
12 evergreen provision.

12:09:41

13 So there is a contract in effect. There's also
14 another contract that the parties are trying to negotiate. I'm
15 not privy to those negotiations, but my understanding is that
16 they're pretty close to concluding an agreement.

12:10:00

17 The second point I wanted --

18 THE COURT: Before you go to the second point, I have
19 looked at that first contract before back when it was in force.
20 It does seem to me that it doesn't incorporate typical County
21 contract provisions. It has different provisions. So we'll
22 assume that that is the contract going forward?

12:10:15

23 MR. WALKER: Until it's replaced by a new one.

24 THE COURT: Yeah. And I did invite you to tell me in
25 the order if you're not going to pay when I order you to pay

12:10:30

1 the monitor.

2 MR. WALKER: No, we are. In fact, that's my second
3 point, Your Honor. We are holding the bill currently from the
4 monitor, and given that we don't have any independent review
5 process in place, we're awaiting the Court's order with respect 12:10:46
6 to that bill.

7 THE COURT: All right. Thank you.

8 MR. WALKER: Thank you.

9 MR. YOUNG: Your Honor, may I be heard briefly on that
10 issue? 12:10:54

11 THE COURT: You certainly may.

12 MR. YOUNG: Plaintiffs have not been involved very
13 much, if at all, in this process. We do have a concern,
14 though, that since the County is a party in the case, that
15 review of the monitor's bills by parties should not have the 12:11:05
16 effect of impeding or delaying actions by the monitor. We just
17 want to make it clear that we do have an interest in this
18 issue, because we want the Court's orders to be fully
19 implemented, and we would be concerned if the review process
20 with the County does impede that process. 12:11:22

21 THE COURT: All right. Thank you.

22 With respect -- and I mentioned this with Ms. Iafrate
23 earlier -- we're going to set -- well, we have some scheduling
24 matters that we need to raise. Maybe we ought to raise those
25 first. 12:11:40

1 We've had a lot of talk about other lawsuits that may
2 involve the sheriff or may involve similar issues in this court
3 in front of other courts, and I must confess that I do not
4 know -- I mean, I know something about those lawsuits because
5 one of them, the one in front of Judge Silver, has been an
6 issue here before, even though briefly. I don't know a lot
7 about it.

12:11:58

8 But it did seem to me that I have read in the paper
9 that that has -- and maybe I need to talk to you again,
10 Mr. Walker -- that the County Board of Supervisors has approved
11 settlement of large and substantial portions of that lawsuit,
12 and the reason why I ask is twofold: First, I want to
13 reschedule, at a time that will be convenient for everybody,
14 the resumption of this contempt hearing. I have no intention
15 of rescheduling it, of course, on top of when the defendants
16 may have to be in Judge Silver's court; nor do I have any
17 intention of rescheduling it until I'm sure that all the
18 documents and other matters have been provided so that we can
19 do this once and be done with it; nor do I have any intention
20 of putting this off very long.

12:12:17

12:12:36

12:12:56

21 I do believe, Mr. Masterson, that you will have time
22 to -- Mr. Popolizio, or --

23 I'm sorry, what's your name?

24 MR. POPOLIZIO: Popolizio, Your Honor.

25 THE COURT: Popolizio. I apologize.

12:13:09

1 I do believe, Mr. Masterson and Mr. Popolizio, that
2 you will have time to file, if you do it timely, I'm not going
3 to -- I'm not going to try and sneak any hearing in before you
4 can get the Ninth Circuit to consider your writ of mandamus. I
5 think you'll have time to get that up there, and if they're
6 going to act on it, they can act on it. But I do want to
7 schedule it in an efficacious, speedy fashion that will be fair
8 to all the parties.

12:13:25

9 Did you have something you wanted to say,
10 Mr. Masterson?

12:13:41

11 MR. MASTERSON: Just briefly, Judge, and I think
12 possibly --

13 THE COURT: Do you want to go to a microphone or else
14 pull that one up to you? You're tall.

15 MR. MASTERSON: I believe you already may know this,
16 and Mr. Walker will be addressing the other case, United States
17 versus Arpaio, that Mr. Popolizio and I are also defending that
18 case.

12:13:51

19 THE COURT: I do. I do, and -- well, I don't think it
20 poses any problem as long as I don't overlap. But here is my
21 problem, here are a couple of my problems.

12:14:05

22 One, the County has authorized settlement, according
23 to the newspaper, and I'm not taking this at face value; I'm
24 putting it out there. One of the reasons that settlement
25 occurred was a reliance on the injunctive relief that was

12:14:24

1 already in place in this action, and the no perceived need to
2 duplicate compliance. I get that. I appreciate it. I
3 understand why the County would act that way.

4 However, I am wondering if the County has been fully
5 advised that one of the positions Mr. Popolizio and 12:14:43
6 Mr. Masterson is taking is that if in fact this Court is
7 removed by the Ninth Circuit from presiding over this case, the
8 supplemental permanent injunction and the findings of fact and
9 conclusions of law I made three years ago should be vacated, in
10 which case there would be no injunctive relief on which the 12:15:06
11 County or the plaintiffs could rely.

12 Now, obviously, I don't think that's going to happen,
13 but I'm not the Ninth Circuit, and I haven't suggested the
14 action is brought by Mr. Popolizio in bad faith. So I wonder
15 if the County has been fully advised, if the plaintiffs in 12:15:19
16 United States versus Arpaio have been fully advised, that the
17 movants are taking the position not only that I should be
18 removed from presiding over the contempt hearing, but that the
19 injunctive relief and the findings of fact and conclusions of
20 law I entered years ago should be vacated. 12:15:45

21 Are you aware whether the County Board of Supervisors
22 has been so advised?

23 MR. WALKER: Yes, I think the Board of Supervisors is
24 aware, and I think I can clarify this to some extent.

25 The settlements -- which, incidentally, were submitted 12:16:01

1 to the Court, to Judge Silver, on Friday -- cover the
2 Department of Justice's claims with respect to worksite
3 operations, alleged retaliation, and treatment of LEP prisoners
4 in the jails. The settlements do not cover the claims related
5 to such things as traffic stops and so forth.

12:16:22

6 Now, Judge Silver issued a motion for summary judgment
7 which we understand to reflect a conclusion that this Court's
8 rulings with respect to alleged discriminatory activity in
9 connection with traffic stops conducted in the context of
10 immigration enforcement, that that -- that ruling is binding in
11 the DOJ litigation.

12:16:46

12 DOJ is -- at least was seeking relief for alleged
13 discrimination in other forms of policing activity. We had
14 to -- we were required to submit to Judge Silver this
15 morning -- and since I've been here, I'm not sure that
16 happened, but I assume it was -- a statement to Judge Silver
17 about what the parties, the respective parties, meaning the
18 Department of Justice, the sheriff, and the County, perceive as
19 needing yet to be tried in that case.

12:17:14

20 And we have a bit of a disagreement, which presumably
21 Judge Silver will resolve, but the issues of appropriate
22 remedies with respect to either the portion of the case on
23 which Judge Silver issued summary judgment, or any additional
24 alleged improper activity that the United States is still
25 planning to litigate, those are issues that at this point

12:17:31

12:18:02

1 remain to be resolved.

2 THE COURT: All right. And so if in theory not only
3 was I removed from this case, but the Ninth Circuit took the
4 unusual step of vacating a case they've already affirmed on
5 appeal, that case would be subject to retrial, then, in the 12:18:20
6 United States -- or those issues would be subject to retrial in
7 United States versus Arpaio as well as in the plaintiffs'
8 lawsuit here?

9 MR. WALKER: Well, let me put it this way. The
10 settlements that Your Honor has been reading about in the paper 12:18:38
11 don't touch that issue. The issue of the implications of this
12 Court's order for the Department of Justice claims is the issue
13 that we think still remains to be resolved.

14 If this Court's order were vacated, you know, I think,
15 theoretically, a Rule 60 motion in Judge Silver's court might 12:19:06
16 be appropriate. But I can also tell Your Honor that we're
17 working with the Department of Justice to see if we can resolve
18 that last bit, and I think we'll know this week whether that's
19 going to happen.

20 THE COURT: Mr. Popolizio, do you anticipate going to 12:19:23
21 trial in front of Judge Silver?

22 MR. POPOLIZIO: That remains to be seen, Your Honor.
23 As Mr. Walker has stated, we are trying to resolve that issue,
24 but if so, it will be on August 10th.

25 THE COURT: And Mr. Masterson, Mr. Popolizio, if you 12:19:36

1 do go to trial, you've resolved a lot of the issues.

2 How long is trial going to take?

3 MR. MASTERSON: Well, Judge, we settled, probably,
4 regardless of how the final issues work out, we probably got
5 rid of a good 75 percent of the issues by settlement agreement. 12:19:50

6 I cannot tell the Court at this point how many days
7 the remainder may take, because frankly, I do not know at this
8 point what the United States intends to present in the event we
9 go forward.

10 The trial was initially set for 15 days. That was for 12:20:13
11 all issues. Both sides, including the County, reported to
12 Judge Silver that we felt it would take at least three months
13 to try all issues of the case. So having reduced that by
14 75 percent, possibly we could fit the remainder in the 15 days
15 currently scheduled. 12:20:34

16 But like I said, Judge, I don't know at this point, or
17 I'm not sure the United States knows what they intend to
18 present in the event we have to go forward. I think everyone
19 at this point is focusing on how can we resolve the issues
20 before we have to head down there? 12:20:50

21 THE COURT: All right. Thank you.

22 Did you want to be heard on this at all, Mr. Young?

23 MR. YOUNG: No, Your Honor.

24 THE COURT: All right. It does seem to me that it's
25 fairly likely that the August matter will go away 12:21:00

1 substantially, if not completely, and whatever happens to this
2 case after whatever the Ninth Circuit may or may not do, I
3 intend to move it forward.

4 As I said, I don't intend to move it so forward so
5 quickly, Mr. Masterson, Mr. Popolizio, Ms. Iafrate, that your 12:21:14
6 writ of mandamus can't at least be heard by them. But I do
7 intend to move it forward, because, for reasons that everybody
8 appreciates, we need to move forward, and we need to correct
9 anything that's problematic and resolve this case. I'm sure
10 that all parties agree. 12:21:37

11 As I raised with Ms. Iafrate earlier, the Ninth
12 Circuit mandate does require at least slight revision to the
13 supplemental permanent injunction, so I'd invite all parties,
14 if they want to put forward suggested language, to do so prior
15 to our next status conference. 12:21:54

16 I'm going to set the next status conference for Friday
17 the 31st at 2 p.m. That will probably be in a different
18 courtroom because this courtroom is going to go -- undergo,
19 thankfully -- or it may be in a different courtroom, this
20 courtroom is going to, thankfully, undergo some electronic 12:22:08
21 updates.

22 I'm not sure, Mr. Klayman, if your motion for
23 admission pro hac vice will be fully briefed at that point. If
24 it is, we'll hear that then; if it's not, we'll hear it at the
25 next status conference, which will probably be no more than a 12:22:25

1 week away. But we will try and let you know well in advance so
2 that you will be ready.

3 As for rescheduling the ultimate hearing on this
4 matter, I am holding September 22nd through September 25th and
5 September 29th through October 2nd, and I invite you all to
6 clear your calenders. 12:22:48

7 But I will say that if for some reason I believe that
8 we don't have full disclosure of documents, that there are
9 other documents that existed that may have been destroyed or
10 otherwise dealt with, I'm going to take whatever time is 12:23:04
11 necessary to make sure that we have our arms around everything,
12 that we have the interviews and evaluations done, so that we
13 can then move forward, have the hearing, and proceed to
14 whatever relief may be merited.

15 Is there anything else that needs to be addressed by 12:23:21
16 the parties?

17 MR. YOUNG: Your Honor, we have one issue we would
18 like to raise.

19 THE COURT: All right.

20 MR. YOUNG: This relates to the documents that were 12:23:33
21 ordered released publicly by the Court recently relating to the
22 so-called Seattle investigation in which it seems apparent that
23 members of the MCSO were attempting to obtain information.

24 As has been discussed, that information that they did
25 obtain was junk, but from what we understand, the investigation 12:23:56

1 has not been terminated, and we don't know whether the MCSO
2 people are still seeking information through whatever means
3 they might happen to identify.

4 It appears from the documents that the information
5 that they trying to obtain, or thought they were obtaining or 12:24:16
6 might have been obtaining, included at least in part
7 communications, or information about communications, of
8 plaintiffs' counsel. There were references to telephone calls;
9 there was, as late as April of this year, just prior to the
10 previous hearing on this contempt issue, communications urging 12:24:37
11 that the efforts continue, and that genuine and usable
12 information be obtained.

13 We are somewhat concerned about that, obviously. We
14 think it would be improper for the MCSO to continue to obtain
15 information through extrajudicial means that it would then use 12:24:54
16 in the context of this lawsuit. Obviously, there are issues
17 about parties seeking each other's -- information about each
18 other's electronic communications, and we would like some
19 assurance that that will not continue, that those efforts will
20 have ceased. 12:25:16

21 So I throw that open for the Court. I have raised it
22 with counsel for the sheriff, and I don't know what the
23 response is going to be.

24 THE COURT: Ms. Iafrate.

25 MS. IAFRATE: Your Honor, Mr. Young addressed this 12:25:33

1 issue with me out in the hallway right before we walked in, so
2 this is a new issue that I heard about this morning.

3 I disagree with his characterizations of what did or
4 did not happen during that investigation. And in fact, you
5 yourself, Your Honor, said the whole story has not yet been
6 told. So regarding the characterizations of what MCSO did or
7 did not do, or what they requested, I completely disagree with
8 the statements that were just made.

12:25:53

9 Regarding any sort of insurance -- assurance, I would
10 ask that I be provided with either a discovery request or at
11 least a letter in writing, and then I can address it with the
12 other side.

12:26:09

13 THE COURT: Well, I understand that, and I do agree
14 that the whole story's not been told. I've invited you to --
15 to tell that story. I intend to provide you the full
16 opportunity to do.

12:26:25

17 It does seem to me that to the extent Mr. Young is
18 asking for the assurance that your client is not attempting to
19 survey his communications with his client, that's not an
20 inappropriate request.

12:26:48

21 MS. IAFRATE: I never said that it was, Your Honor,
22 and in fact, out in the hallway I said that it wouldn't be
23 pertinent for me to respond to that, because it was never
24 raised with me, and so I merely asked that I be provided with
25 it in writing so that we can respond to it appropriately.

12:27:03

1 THE COURT: All right. If you'll provide that request
2 in writing, Mr. Young.

3 MR. YOUNG: We will do that, Your Honor.

4 THE COURT: All right. And if I need to further
5 address the matter, I will do so.

12:27:15

6 MR. YOUNG: Thank you very much.

7 THE COURT: Anything else?

8 Mr. Masterson.

9 MR. MASTERSON: Thank you, Judge.

10 This is my first time appearing down here in this
11 case -- at least at counsel table, I've been here previously --
12 and I think I have everyone sorted out fairly well, including
13 Mr. Gomez from the Department of Justice. But there's someone
14 on the phone from the United States Attorney's Office and I
15 don't know the connection of that person to this case, or even
16 which office they're appearing from.

12:27:23

12:27:38

17 THE COURT: Ms. Kimmins, whose appearance I heard, and
18 Ms. O'Gara, are from the Tucson office of the United States
19 attorneys for Arizona.

20 As I invited your clients to have criminal
21 representation if they wished to do so, because it is possible
22 that -- it is at least conceivable that I'll make a referral
23 for criminal contempt, which is why I've allowed, for example,
24 Mr. Stein, your partner, and others to be here in that special
25 capacity, at the same time I invited the United States

12:28:00

12:28:23

1 Attorney's Office to be here because they would be the people
2 to whom I would have to refer such a criminal contempt
3 proceeding.

4 I think for the most part they've declined that
5 activity. As I've set forth, and I think as you know, in my 12:28:38
6 recusal order I invited them to see if we could negotiate a
7 global conclusion to this before the hearing. I invited them
8 to engage in sort of pre-referral negotiations to see if we
9 could resolve any criminal contempt with your clients prior to
10 undergoing any contempt hearing, and they declined to do that. 12:28:55
11 But they still have the right as a member of the public to be
12 here, just as your clients have been given the additional right
13 to have criminal representation represent their interests in
14 this civil proceeding. That's who they are.

15 MR. MASTERSON: I understand. Thank you, Judge. 12:29:13

16 THE COURT: Um-hum.

17 MR. MASTERSON: One last question. I caught the
18 September 22 to 25 dates you want us to keep open, but I did
19 not catch the October dates.

20 THE COURT: That would be September 29 through October 12:29:23
21 2nd.

22 MR. MASTERSON: That you.

23 MR. YOUNG: Your Honor, one more issue.

24 With respect to those dates, in order for us to do
25 those, we'll need the documents that are supposed to be 12:29:32

1 produced, and I wonder whether we could address the time line
2 for that.

3 Ms. Wang did send a letter to Ms. Iafrate on July 9
4 listing a number of things that have not yet been produced that
5 should have been produced, in our view, some time ago. We have 12:29:51
6 not had a response to that yet, and I wonder whether we could
7 try to implement some sort of schedule that would allow us to
8 have the hearing on those September dates.

9 THE COURT: Why don't I suggest this? I had
10 previously set weekly status conferences to make that possible 12:30:05
11 in the interim between the two hearings. I intend to hold
12 regular status conferences now to accomplish that same purpose:
13 to make sure that the documents are provided, or if they're
14 not, to take the action necessary to get them provided, and, if
15 necessary, to reschedule the hearing to make sure that we have 12:30:27
16 everything available.

17 Why don't I suggest that you get with Ms. Iafrate and
18 see if you can come up with hard dates and propose them to me
19 next Friday, a schedule. And if you can't, then you tell me
20 what you don't have and why you need it, and I will set dates 12:30:43
21 next Friday myself if you can't arrive at them.

22 MR. YOUNG: Thank you, Your Honor.

23 THE COURT: Anything else?

24 MR. WALKER: Just a question, Your Honor.

25 You said "next Friday." Do you mean July 31st? 12:30:54

1 THE COURT: That is what I mean. I meant the Friday
2 after this week.

3 All right. I'll see you then. Thank you.

4 THE CLERK: All rise.

5 (Proceedings concluded at 12:31 p.m.)
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C E R T I F I C A T E

I, GARY MOLL, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 21st day of July, 2015.

s/Gary Moll

Exhibit 13

1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF ARIZONA

3
4 Manuel de Jesus Ortega)
Melendres, et al.,)
5)
Plaintiffs,) CV 07-2513-PHX-GMS
6)
vs.) Phoenix, Arizona
7) July 24, 2015
Joseph M. Arpaio, et al.,) 3:04 p.m.
8)
Defendants.)
9 _____)

10
11
12
13
14
15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 BEFORE THE HONORABLE G. MURRAY SNOW

17 (In-Court Hearing)
18
19
20
21

22 Court Reporter: Gary Moll
23 401 W. Washington Street, SPC #38
Phoenix, Arizona 85003
24 (602) 322-7263

25 Proceedings taken by stenographic court reporter
Transcript prepared by computer-aided transcription

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Also present:

Chief Robert S. Warshaw, Monitor
Commander John Girvin, Deputy Monitor
Chief Raul Martinez, Deputy Monitor
The Monitoring Team

P R O C E E D I N G S

THE COURT: Please be seated.

THE CLERK: This is civil case number 07-2513,
Melendres v. Arpaio, on for in-court hearing.

15:04:13

Counsel, please announce your appearances.

MR. POCHODA: Good afternoon. Dan Pochoda from the
ACLU of Arizona for plaintiffs.

MR. BENDOR: Good afternoon. Josh Bendor of the ACLU
of Arizona for plaintiffs.

15:04:24

THE COURT: Good afternoon.

MR. MASTERSON: Good afternoon, Judge. John Masterson
and Joe Popolizio for Sheriff Arpaio.

THE COURT: Good afternoon.

MS. IAFRATE: Good afternoon, Your Honor. Michele
Iafrate on behalf of Joe Arpaio.

15:04:34

THE COURT: Good afternoon.

MR. MITCHELL: Good afternoon, Judge. Barry Mitchell
on behalf of Chief Gerard Sheridan. He's not present today,
Your Honor.

15:04:52

THE COURT: Good afternoon. Anyone else?

MR. WALKER: Richer Walker on behalf of that portion
of Maricopa County government embodied in the Board of
Supervisors, the county manager, and the employees reporting to
them.

15:05:03

1 acknowledged to the monitor.

2 THE COURT: Did you determine who gave that
3 instruction?

4 CHIEF WARSHAW: We attempted to, and the answer we
5 received was that would be an attorney-client matter. 15:09:33

6 THE COURT: All right.

7 CHIEF WARSHAW: With the full belief that this matter
8 is at the heart of the issue before the Court and our
9 determination to at least see these documents, I instructed one
10 of our two deputy monitors, Commander Girvin, last night to 15:09:52
11 make an attempt to reach out to senior executives of the MCSO
12 for the simple purpose of making arrangements to see if we
13 could see these IDs.

14 Commander Girvin attempted to call both telephonically
15 and by text message Captain Steven Bailey, the commanding 15:10:09
16 officer of the Professional Standards Bureau, as well as Chief
17 Deputy Sheridan, but with no luck.

18 Further, at my instruction, and after a reasonable
19 passage of time, Commander Girvin reached out to Captain Russ
20 Skinner, who's the commander of the agency's court compliance 15:10:30
21 implementation division, and he is the official contact of the
22 MCSO for -- the contact for us.

23 Captain Skinner was very cooperative and he attempted
24 to reach Captain Bailey, Chief Deputy Sheridan, and he reported
25 back to Commander Girvin that he also had attempted to reach 15:10:53

1 counsel but with no luck.

2 At that point, knowing full well that we very much
3 wanted to see these documents but were not getting cooperation
4 with the lack of response, I initiated an e-mail to every
5 attorney involved in this case advising that I might very well 15:11:13
6 ask for an emergency hearing for the purposes of getting relief
7 from the Court so we could in fact access those documents.

8 This morning I noted an e-mail from Ms. Iafrate. I
9 did call her at approximately 7:45 this morning. She inquired
10 with more specificity as to what it is that we wanted. I 15:11:40
11 advised her that we were looking to gain access to 1500 IDs
12 that had been brought to our attention as well as 50
13 hard drives that we believed to be in the Property Unit and
14 were associated with the Dennis Montgomery matter.

15 I would note that back on April 27th, when we received 15:12:03
16 the single hard drive that we did get at that time, we were
17 told by Chief Knight that that material was the only material
18 in the possession of the agency relevant to the Montgomery
19 matter. I gave Ms. Iafrate the DR number, the department
20 report number that was associated with the 50 hard drives. 15:12:24

21 Though I didn't hear back from Ms. Iafrate, we
22 proceeded to the Professional Standards Bureau and got there
23 about 8:30 this morning, myself, Chief Martinez, and
24 Chief Kiyler. We were met by Lieutenant Kratzer, who advised
25 us that he had been told by Captain Bailey that we were coming. 15:12:49

1 these particular documents were slated for destruction, and had
2 this matter not come to our attention and had we not made the
3 kind of inquiry that we made, these items in fact would have
4 been destroyed.

5 THE COURT: When you talk about the 50 hard drives 15:18:24
6 related to the Montgomery investigation, where did you find out
7 about those?

8 CHIEF WARSHAW: As a result of document requests that
9 were made of the MCSO, after the initial release of the single
10 hard drive we got on April 27th, it became apparent, in looking 15:18:45
11 at various e-mail streams, that there were references to
12 hard drives that were repositied in the Property Unit.

13 THE COURT: Did anybody look -- did you request the
14 hard drives in the Property Unit?

15 CHIEF WARSHAW: We request -- I'm sorry, Judge. 15:19:06

16 THE COURT: I think -- did you request that the
17 hard drives be turned over that were in the Property Unit?

18 CHIEF WARSHAW: We request any and all. Yes, we
19 certainly today requested that today, yes, sir.

20 THE COURT: And you talked about a specific DR number. 15:19:17

21 Is that a locker? What is that?

22 CHIEF WARSHAW: The DR number would be -- a DR
23 number is the department report number, so it would be a filing
24 mechanism in which they could find the items in the particular
25 bin based upon what the DR number is. 15:19:34

1 THE COURT: Did you request what the contents of that
2 particular DR unit was? Did you ask anybody to verify the
3 contents of that unit?

4 CHIEF WARSHAW: Yes.

5 THE COURT: And what were you told?

15:19:46

6 CHIEF WARSHAW: We were told that the number that we
7 gave did in fact correspond to 50 hard drives.

8 THE COURT: Was there anything else in the unit?

9 CHIEF WARSHAW: I do not believe. I don't believe.

10 THE COURT: Okay. And so you haven't had any response
11 in --

15:20:04

12 CHIEF WARSHAW: We've had no response.

13 THE COURT: -- in terms of your request to have those
14 50 hard drives.

15 CHIEF WARSHAW: That is correct. And we made that
16 very clear to Lieutenant Kratzer, that that was also part of
17 our mission this morning.

15:20:11

18 THE COURT: Ms. Iafrate.

19 MS. IAFRATE: Your Honor, if I could rely on
20 co-counsel to talk about this chain of events, I've kind of
21 been out of commission the last 24 hours.

15:20:36

22 I can tell you that I did have a conversation with
23 Mr. Warshaw this morning. He provided me with the DR number.
24 I called over to Property and Evidence in order to make certain
25 that that property was pulled, and I received information that

15:20:53

1 THE COURT: Did you ask the MCSO to provide you with
2 these documents back in February?

3 MS. IAFRATE: Your Honor, I believe that that's a
4 privileged communication.

5 THE COURT: All right. All right. You're right. 15:23:13
6 Anything else you want to say?

7 MS. IAFRATE: Your Honor, regarding the other
8 chronology of events, I apologize that I'm not prepared to
9 testify regarding that, and I would hope that Mr. Masterson
10 would have the opportunity to answer any further questions. 15:23:27

11 THE COURT: Well, as it pertains to the 50
12 hard drives, I did, too, notice in the documents that have been
13 made public that some of the e-mails reference 50 or 60
14 hard drives taken from Mr. Montgomery, and noted that
15 apparently you -- by "you" I don't mean you personally; I mean 15:23:43
16 your client -- produced only one in May.

17 Have you made any effort to determine what is in that
18 DR file that Mr. Warshaw asked you about?

19 MS. IAFRATE: Yes.

20 THE COURT: And what is in there? 15:24:00

21 MS. IAFRATE: There are approximately 40 to 50
22 hard drives that may potentially relate to documents from the
23 Seattle investigation.

24 THE COURT: Anything else in there?

25 MS. IAFRATE: No. 15:24:12

1 THE COURT: Thank you.

2 Mr. Masterson.

3 MR. MASTERSON: Judge, I guess I'd first like to
4 address -- well, I have a question, perhaps the Court already
5 answered this question, where in the Court's order setting this 15:24:36
6 hearing today the Court says that defendants have "declined to
7 provide access."

8 THE COURT: Yes, I did answer that question.

9 MR. MASTERSON: Okay.

10 THE COURT: I don't know that you've declined to 15:24:47
11 provide access; that was a misunderstanding on my part.

12 MR. MASTERSON: All right. The second thing I --

13 THE COURT: Are you going to provide those
14 hard drives?

15 MR. MASTERSON: I knew nothing of the hard drives 15:24:56
16 until --

17 THE COURT: How about my order that the hard drives be
18 produced right now?

19 MR. MASTERSON: Well, I don't have them with me, but
20 here's my question. I'm going to object, and I assume there 15:25:10
21 have been objections before, as to relevance of these
22 hard drives in the Montgomery materials, because I do not
23 see --

24 THE COURT: I've already ruled on that 40 times.
25 Objection's overruled. 15:25:22

1 MR. MASTERSON: Well, let me make my record, please,
2 Judge.

3 THE COURT: The record has been made. Go ahead and
4 make it, Mr. Masterson.

5 MR. MASTERSON: Your Honor --

15:25:30

6 THE COURT: Let me tell you something. I realize that
7 you're new to this litigation, but you certainly have read,
8 have you not, my questioning of Sheriff Arpaio?

9 MR. MASTERSON: I have read your questioning.

10 THE COURT: When I required him to turn over all these
11 things?

15:25:44

12 MR. MASTERSON: You asked him to hold on to them.

13 THE COURT: And I said we would send the monitor over
14 to retrieve them, didn't I.

15 MR. MASTERSON: You did.

15:25:54

16 THE COURT: And that it needed to be done immediately,
17 didn't I.

18 MR. MASTERSON: You did.

19 THE COURT: All right.

20 MR. MASTERSON: But that doesn't make them relevant --

15:25:58

21 THE COURT: All right.

22 MR. MASTERSON: -- to the OSC.

23 THE COURT: Make your objection --

24 MR. MASTERSON: To the --

25 THE COURT: Make your objection on the record.

15:26:02

1 MR. MASTERSON: Your Honor, there are distinct --
2 three distinct issues in the OSC proceeding. There are
3 underlying issues which --

4 THE COURT: Well --

5 MR. MASTERSON: -- the Court ruled on --

15:26:10

6 THE COURT: -- let me tell you what. We're not going
7 to go through this. I'll tell you this. They may not be
8 relevant. I realize that they may not be relevant. But they
9 also may be very relevant. And they were demanded to be
10 produced and they haven't been produced.

15:26:23

11 So I would propose this. I'm going to send the
12 marshals over. You'll provide everything that's in that DR
13 locker. We'll hold it here. I won't look at it. You can have
14 full access to it. So can the monitor. If you have --
15 whatever's in there, and I don't know what's in there, but if
16 whatever is in there is material that I've already ordered --
17 for instance, if, it seems to me, that the other documents
18 suggest -- that's the database that Montgomery downloaded --
19 then it's going to be turned over to the United States
20 Government under the same terms the other matter was turned
21 over. You can preserve whatever objections you have to its
22 relevance in the current proceeding and we'll hear then. There
23 may be nothing that is relevant, but I certainly don't know
24 that now.

15:26:43

15:27:03

25 MR. MASTERSON: I understand that, Judge, and I'm

15:27:14

1 not -- I'm not resisting that or saying that the Court does not
2 have the authority -- I'm certainly not saying the Court does
3 not have the authority to order them produced. I am objecting,
4 and I think the objection's been made before and ruled upon,
5 but I will make a continuing objection to the relevance of
6 those materials to this proceeding.

15:27:29

7 THE COURT: And why don't we find out what those
8 materials are first.

9 MR. MASTERSON: Let's do that.

10 THE COURT: All right.

15:27:40

11 MR. MASTERSON: Now, I --

12 THE COURT: Any problem if I order the marshal to go
13 over and take those documents and put them in the evidence
14 locker of the marshals today?

15 MR. MASTERSON: I don't know. May I consult with
16 counsel, please?

15:27:52

17 THE COURT: You may.

18 MS. IAFRATE: Your Honor, may I have a court order
19 referencing the DR number that I know that Mr. Warshaw has --

20 THE COURT: Sure.

15:28:04

21 MS. IAFRATE: -- so that then we can remove it from
22 Property and then put it back into the marshal property --

23 THE COURT: Sure.

24 MS. IAFRATE: -- just so that we have a chain
25 of custody.

15:28:11

1 THE COURT: Sure, absolutely. I don't know what that
2 is, but I'll -- that's a reasonable request.

3 MS. IAFRATE: Thank you.

4 THE COURT: So we've resolved that one. Let me just
5 be clear on the record, you can have access to it here, and the 15:28:18
6 monitor can have access to it here. And you can review it for
7 privileged materials or whatever else. I'm going to require it
8 to be done with some expedition.

9 What about the -- and then -- then if there's anything
10 in it that I think may be relevant or that the parties think 15:28:40
11 may be relevant, you can raise your -- you can re-raise your
12 relevance objections then. Because it may well be that if that
13 is, for example, the Montgomery database, and it actually turns
14 out to be full of stuff that doesn't relate to anything and
15 isn't taken from the CIA, then there may be limited relevance 15:29:01
16 here except to the extent -- well, there may be no relevance,
17 depending upon what the facts are, other than to verify that
18 the Montgomery investigation was based on whatever, if anybody
19 tries to assert its truthfulness, but that's a very limited
20 relevance, I'll grant you. There may be something in it that's 15:29:23
21 relevant, but I think that we're all entitled to make that
22 determination based on the documents.

23 That being said, was there anything else you wanted to
24 say about the document, the hard drives?

25 MR. MASTERSON: No, I have -- no, nothing about the 15:29:35

Exhibit 14

1.4k

194

Search for people, places and things



New! Add multiple photos, message friends of friends and more.

Hide

See What's I

Inbox (99+) Other

More

Karen Morris Grissom

New Message

Actions

Search

**Angela Blom**

2:30pm

Show her how much u love a... 1 new

**Amal Elsayy**

2:13pm

hi 1 new

**Jason McMullin**

2:05pm

Thank God for men like you h... 1 new

**Karen Morris Grissom**

1:28pm

Judge Snow I know his wife a...

**Michael Homer Sr.**

1:20pm

I have such respect for you. ... 1 new

**David Pemberton**

1:19pm

you go Joe I don't care what ... 1 new

**Capreй Грек**

1:02am

В современной мировой эконо... 3 new

**Randy Pistorius**

Wed

?? 5 new

**Karl Douglas Allen**

Wed

The corrupted two party s... 3 new

**Eric Heinz**

Wed

You need to run for President...

**David Neiggenmann**

Wed

Hang tough sheriff ... you are... 2 new

**Paul Gnau**

Wed

I am a retired Army Officer as... 2 new

Conversation started today

**Karen Morris Grissom**

Judge Snow I know his wife and talked with her one day she recognized me from our childhood she told me that her husband hates u and will do anything to get u out of office. This has bothered me since last year when I saw her.

Sent from Phoenix

Write a reply...



Add Files



Add Photos

Press Enter to send

Reg

MELC198706

Exhibit 15



Office of the Clerk
United States Court of Appeals for the Ninth Circuit
Post Office Box 193939
San Francisco, California 94119-3939
415-355-8000

Molly C. Dwyer
Clerk of Court

August 06, 2015

No.: 15-72440
D.C. No.: 2:07-cv-02513-GMS
Short Title: Joseph Arpaio, et al v. USDC-AZP

Dear Petitioner/Counsel

A petition for writ of mandamus and/or prohibition has been received in the Clerk's Office of the United States Court of Appeals for the Ninth Circuit. The U.S. Court of Appeals docket number shown above has been assigned to this case. Always indicate this docket number when corresponding with this office about your case.

If the U.S. Court of Appeals docket fee has not yet been paid, please make immediate arrangements to do so. If you wish to apply for in forma pauperis status, you must file a motion for permission to proceed in forma pauperis with this court.

Pursuant to FRAP Rule 21(b), no answer to a petition for writ of mandamus and/or prohibition may be filed unless ordered by the Court. If such an order is issued, the answer shall be filed by the respondents within the time fixed by the Court.

Pursuant to Circuit Rule 21-2, an application for writ of mandamus and/or prohibition shall not bear the name of the district court judge concerned. Rather, the appropriate district court shall be named as respondent.

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

In re JOSEPH M. ARPAIO, in his official
capacity as Sheriff of Maricopa County, Arizona,

Defendant/Petitioner,

and GERARD A. SHERIDAN,

Specially appearing non-party/Petitioner,

vs.

UNITED STATES DISTRICT COURT for the
District of Arizona,

Respondent Court,

and

MANUEL DE JESUS ORTEGA MELENDRES,
et al.,

Plaintiffs/Real Parties in Interest.

No.

U.S. District Court

No. CV 07-02513-PHX-GMS

PETITION FOR WRIT OF MANDAMUS

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RELIEF SOUGHT

Pursuant to 28 U.S.C. § 1651 and Rule 21, Fed. R. App. P., Petitioners Joseph M. Arpaio and Gerard A. Sheridan respectfully request the Court to enter a Writ of Mandamus directing the United States District Court for the District of Arizona, Honorable G. Murray Snow, to recuse himself from further proceedings in this action. The district court's actions require recusal under 28 U.S.C. § 455(a) and (b). Sheriff Arpaio and Chief Deputy Sheridan have no other plain, speedy, or adequate remedy by appeal.

ISSUE PRESENTED

The record demonstrates that Judge Snow's recusal was mandated under 28 U.S.C. § 455(a) and (b). Was the court's refusal to grant the motion to recuse clear error requiring mandamus relief?

RELEVANT FACTS AND STATEMENT OF THE CASE

A. Events leading up to the civil contempt hearing.

In December 2007, Latino motorists brought a § 1983 class action against the Maricopa County Sheriff's Office ("MCSO") and Sheriff Arpaio in his official capacity, among others, alleging that Defendants engaged in a custom, policy, and practice of racially profiling Latinos, and had a policy of

unconstitutionally stopping persons without reasonable suspicion in violation of Plaintiffs' Fourth and Fourteenth Amendment rights.¹ [Doc. 1, Ex. 30, amended by Doc. 26, Ex. 29]. Plaintiffs sought declaratory and injunctive relief. [Doc. 1 at 19-20, Ex. 30].

After discovery closed, the parties filed competing motions for summary judgment. Plaintiffs' motion included a request for a preliminary injunction. [Docs. 413, Ex. 27; 421, Ex. 26]. The court granted Plaintiffs' motion in part, and entered a preliminary injunction on December 23, 2011. [Doc. 494, Ex. 25]. The injunction prohibited MCSO from "detaining individuals in order to investigate civil violations of federal immigration law," and from "detaining any person based on actual knowledge, without more, that the person is not a legal resident of the United States." [*Id.* at 39, Ex. 25]. Absent probable cause, officers could detain individuals only based on reasonable suspicion that "criminal activity may be afoot." [*Id.* at 5, Ex. 25].

A bench trial took place, and the court issued Findings of Fact and Conclusions of Law, finding that MCSO's operations and procedures were unconstitutional. [Doc. 579 at 115–31, Ex. 22]. After allowing the parties to attempt to negotiate the terms of a consent decree, in October 2013, the court

¹ This Court recently ordered the dismissal of MCSO, a non-jural entity, as a named defendant and the substitution of Maricopa County in its place. *Melendres v. Arpaio*, 784 F.3d 1254, 1260 (9th Cir. 2015).

ordered supplemental injunctive relief to remedy the violations and defined enforcement mechanisms for such remedies. [Doc. 606, Ex. 21].

On May 14, 2014, Defendants, on their own initiative, informed the court and Plaintiffs' counsel that a former member of the MCSO Human Smuggling Unit, Deputy Charley Armendariz, who testified at the bench trial, had committed suicide; and that MCSO had discovered in Armendariz's garage numerous items such as driver's licenses and license plates apparently confiscated from people Armendariz had stopped, and video recordings of traffic stops Armendariz had conducted. [Doc. 880 at 3-4, Ex. 18]. Some of those videos revealed what MCSO characterized as "problematic activity" by Deputy Armendariz. [*Id.*, Ex. 18].

In light of the Armendariz videotapes and the uncertainty as to whether other officers had also recorded stops, the court ordered Defendants to quietly retrieve all stop recordings. [*Id.*, Ex. 18]. The Court also found documents apparently requiring some officers to make such recordings during the time relevant to Plaintiffs' claims, which had not been disclosed to Plaintiffs. [*Id.* at 5, Ex. 18].

The Armendariz videotapes resulted in administrative interviews with MCSO personnel. Those interviews revealed that for seventeen months after the court issued the preliminary injunction, Defendants conducted immigration

interdiction operations, and detained persons in violation of the court's preliminary injunction order.

The court ruled that civil contempt proceedings were necessary to determine whether Defendant Sheriff Arpaio and others at MCSO, including non-party Chief Deputy Gerard Sheridan, should be held in contempt for: (1) failing to implement and comply with the preliminary injunction; (2) violating discovery obligations; and (3) acting in derogation of the court's May 14, 2014 Order. [*Id.* at 26, Ex. 18]. The court opined that the record in the contempt proceedings will help the court evaluate whether civil remedies will vindicate the rights of the Plaintiff class, or whether a criminal contempt referral is necessary and appropriate. The court also ordered a number of MCSO supervisors, including Chief Deputy Sheridan, to attend the contempt hearing as potential contemnors. Each obtained separate criminal counsel.

B. Motion to vacate contempt hearing.

On March 17, 2015, Sheriff Arpaio and Chief Deputy Sheridan ("Movants") consented to the imposition of civil contempt sanctions against them, and moved to vacate the contempt hearing. [Doc. 948, Ex. 17]. Movants stipulated to the facts stated in the Court's Order to Show Cause [Doc. 880, Ex. 18], to the entry of a civil contempt order [Doc. 948 at 3, Ex. 17], and expressed

sincere remorse that they had violated the preliminary injunction. [*Id.* at 2, Ex. 17].

The court made it clear that before it would accept Movants' proposal, Arpaio would need "skin in the game," which Movants understood to mean that he would need to pay a sanction from his personal funds (though this lawsuit names Defendant Arpaio only in his official capacity). Movants proposed a non-exclusive list of remedial measures, including: (1) the payment of \$100,000 from Defendant Arpaio's personal funds to a public interest group; (2) acknowledging the violations in a public forum; (3) the creation and initial funding of a reserve to compensate victims of MCSO's violation; (4) a plan to identify victims of the violation; (5) permitting the Monitor to investigate any matter that related to the violations; (6) moving to dismiss the then-pending Ninth Circuit appeal; and (7) paying Plaintiffs' reasonable attorney's fees necessary to ensure compliance with the court's orders. [Doc. 948 (Ex. B), Ex. 17]. Given these proposals, Movants asked the court to vacate the evidentiary hearing. [*Id.* at 4, Ex. 17]. The court refused.

Not only did the court refuse to vacate the contempt proceedings and enter judgment as stipulated to by Movants [Doc. 1007, Ex. 16], but the court asked the United States Attorney's Office for the District of Arizona to attend the contempt settlement proceedings to determine, among other things, whether

the evidence would justify holding the individuals in criminal contempt. The U.S. Attorney's Office declined the invitation to participate in this capacity, noting that its participation was against departmental policy. [Doc. 1164 at 5:16-18, Ex. 8].

C. The court's *sua sponte* inquiry into irrelevant subjects during the contempt hearing.

The civil contempt hearing commenced on April 21, 2015. On April 23, 2015, after both parties had finished questioning Sheriff Arpaio while he was on the stand, [4/23/15 Tr. at 624, Ex. 15], the court *sua sponte* initiated its own inquiry into matters (described below) that no party had raised, and which are wholly unrelated to any of the three defined grounds for the contempt proceeding.²

The court's questions stemmed entirely from hearsay statements the court had apparently read in a Phoenix New Times blog post by Stephen Lemons. [Doc. 1117 (Ex. 2), Ex. 11; *see also* 4/23/15 Tr. at 643, 648-649, Ex. 15]. This blog post had never been disclosed to the parties during the hearing or to their counsel. Neither was any advance notice given to anyone involved in the contempt proceeding that the article would be discussed or relied upon by the

² Again, those issues are: (1) failing to implement and comply with the preliminary injunction; (2) violating discovery obligations; and (3) acting in derogation of this Court's May 14, 2014 Orders. [Doc. 880 at 26, Ex. 18].

court in any way.³ Instead, the court waited until Sheriff Arpaio was on the stand, under oath, to raise the issues for the first time, depriving him of the opportunity to prepare for the questioning or to consult with his counsel. Such conduct would never have been tolerated from a litigant.

The following day, the court continued this inquiry into these matters during Chief Deputy Sheridan's testimony.⁴

1. The Grissom Investigation.

The court reviewed the New Times blog post in open court, despite it not being marked as an exhibit, and showed it to Sheriff Arpaio without giving Sheriff Arpaio the opportunity to review it with his counsel, and then asked Sheriff Arpaio whether he was aware that the court or any of his family members had ever been investigated by anyone. [4/23/15 Tr. at 647:8-17, Ex. 15]. In response, Sheriff Arpaio stated that MCSO had not investigated the court or the court's family, but there was investigation of other people about

³ Indeed, the court recognized that it "opened [a] can of worms" by inquiring into the Grissom/Montgomery investigations. [4/24/15 Tr. at 941:25-942:2, Ex. 14].

⁴ Although Sheriff Arpaio's counsel initiated questioning of Chief Deputy Sheridan regarding the Grissom/Montgomery investigations, counsel only inquired into these matters in order to clarify Sheriff Arpaio's testimony that was solely elicited by the court the prior day. [4/24/15 Tr. at 920-22, 955:12-15, Ex. 14]. Moreover, after counsel began questioning the Chief Deputy, the court proceeded to interject itself several times, and directly examined the Chief Deputy once the Grissom investigation came up. [*Id.* at 961:24-25, 963:13-18, 964:7-966:21, Ex. 14].

statements the court's wife made to those people. [*Id.* at 647-48, Ex. 15]. In August 2013, Karen Grissom sent the Sheriff a Facebook post stating that Judge Snow's wife told Mrs. Grissom in a restaurant that Judge Snow hated Sheriff Arpaio and would do anything to get Sheriff Arpaio out of office. [*Id.* at 654-55, Ex. 15; 4/24/15 Tr. at 962:14-16, Ex. 14; Doc. 1117 (Ex. 5), Ex. 11]. The court's wife made this statement in the restaurant to Mrs. Grissom during the litigation of this case, just prior to the bench trial.⁵ [*See* Doc. 1117 (Exs. 6-7), Ex. 11]. Mrs. Grissom was upset enough about the statement to report it to the MCSO. [Doc. 1117 (Ex. 5), Ex. 11].

As a result of Mrs. Grissom's message, the Sheriff's then-attorney hired a private investigator to interview three individuals: Karen Grissom, her husband Dale Grissom, and their adult son Scott Grissom (not the court's wife or family members), to assess the truth of Mrs. Grissom's report. [4/23/15 Tr. at 655, Ex. 15]. The Grissoms have been unwavering in their recollection of Judge Snow's wife's statement that Judge Snow hated the Sheriff and would do anything to get him out of office. [Doc. 1117 (Exs. 6-8), Ex. 11].⁶ Of course, MCSO's

⁵ The interview of Mrs. Grissom revealed that she had known the court's wife for many years, since they both grew up in Yuma, Arizona. [Doc. 1117 (Ex. 6 at 7-8), Ex. 11].

⁶ Even though these individuals were deemed credible, and even though they verified that Judge Snow's wife made the statements, Sheriff Arpaio never "went any further than just verifying that [a] conversation [between Karen

investigation into Mrs. Grissom's report had absolutely nothing to do with the Sheriff's Office's failure to comply with the preliminary injunction; its violation of discovery obligations, or the district court's May 14, 2014 Order. Despite this, the court continued to interrogate Sheriff Arpaio and Chief Deputy Sheridan regarding this issue during the contempt proceedings.

2. The Montgomery Investigation.

Judge Snow also questioned Sheriff Arpaio and Chief Deputy Sheridan about a second investigation, equally unrelated to the three contempt issues. This inquiry related to MCSO's use of a confidential informant named Dennis Montgomery who claimed he had information of alleged e-mail breaches (including the e-mails of the Sheriff's attorneys), wiretaps of the Sheriff and judges, and computer hacking of 50,000 bank accounts of Maricopa County citizens. [4/23/15 Tr. at 647:1-3, 649, Ex. 15; 4/24/15 Tr. at 1003:9-11, 1006:6-10, Ex. 14]. Judge Snow himself later recognized that the documents involved in the Montgomery investigation "appear to allege or suggest that this Court had contact with the Department of Justice about this case before the Court was ever assigned to it." [5/14/15 Transcript at 45:17-19, Ex. 12]. Moreover, Judge Snow stated on the record that the Montgomery Investigation appears to allege

Grissom and the court's spouse] . . . occurred." [4/24/15 Tr. at 966:11-16, Ex. 14].

that the random selection process of this court was subverted so that the case was deliberately assigned to him and that he had conversations with Eric Holder and Lanny Breuer about this case. [*Id.* at 45:19-25, Ex. 12]. Again, this inquiry stemmed entirely from hearsay statements in a Phoenix New Times blog post and were entirely unrelated to the three clearly defined topics of the contempt hearing.⁷

D. Judge Snow's Post Hearing Expansion of the Monitor's Duties.

After this part of the contempt hearing concluded, Judge Snow authorized the Monitor (who had been appointed to oversee the injunctive remedies) to investigate these unrelated issues and any other areas he deemed fit. [*See* 5/14/15 Tr. at 49:15-21, 50:24-51:6, Ex. 12].

Sheriff Arpaio's counsel objected to (a) the court morphing the contempt proceeding into an inquiry into matters unrelated to the areas of contempt that had been noticed by the court and (b) the expansion of the Monitor's powers as a violation of Sheriff Arpaio's due process rights. The court overruled the

⁷ During an emergency hearing on July 24, 2015, defense counsel raised an objection regarding the relevancy of the Montgomery Investigation materials requested by the Court through his Monitor because they did not relate to the three distinct issues in the contempt proceedings. In response, overruling counsel's objection, the court admitted it was unsure of the relevance of the Montgomery Investigation, stating as follows: "I'll tell you this. They may not be relevant. I realize that they may not be relevant. But they also may be very relevant. And they were demanded to be produced and they haven't been produced." [7/24/15 Tr. at 21:6-10; Ex. 1].

objection and refused to “unduly shackle [the Monitor].” [*Id.* at 56-57, Ex. 12]. The court declared that it is “not going to limit the Monitor’s authority and . . . not going to require [the Monitor] to provide [Defendant Arpaio’s counsel] with advance notice of what [the Monitor] wants to inquire into.” [*Id.* at 53:15-21, 58:1-7 Ex. 12].

The expansion of the Monitor’s powers also comes shortly after the Ninth Circuit recently vacated portions of the court’s permanent injunctive order so the powers of the Monitor would be narrowly tailored to address the constitutional violations at issue. *See Melendres v. Arpaio*, No. 13-16285, 2015 WL 1654550, at *10 (9th Cir. Apr. 15, 2015) (“We therefore vacate these particular provisions and order the district court to tailor them so as to address only the constitutional violations at issue.”). In short, the court gave the Monitor unbridled investigative powers that are not even available to the FBI or other federal law enforcement agencies.⁸

E. Recusal Motion and Further Proceedings.

In light of the foregoing events, Petitioners moved to recuse Judge Snow. [Doc. 1117, Ex. 11]. The primary focus of the motion was the spontaneous

⁸ The Monitor’s most recent quarterly report verifies this increased authority and power. [See Doc. 1170, Ex. 7 (“Subsequent to my appointment, and as a result of further Court proceedings, my duties have been expanded in the areas of . . . oversight of internal investigations and independent investigative authority.”)].

injection of the Grissom/Montgomery investigations into the contempt hearing, the court's independent investigation of these issues, and any other issues, through its Monitor, in contravention of the recent Ninth Circuit decision limiting the role of the Monitor to issues involving the violation of the Fourth and Fourteenth Amendments, and the court's failure to recuse itself in light of his brother-in-law's partnership with Covington & Burling. The motion was fully briefed [*see* Docs. 1150, Ex. 10; 1158, Ex. 9] and denied [Doc. 1164, Ex. 8]. The court then set a hearing to discuss, among other things, "the status of MCSO's remaining internal investigations" (which include the Grissom and Montgomery matters, *see* Doc. 1164 at 40, Ex. 8) and "the Department of Justice's request to see the database of documents given by Montgomery to the MCSO." [*Id.*, Ex. 8]. Petitioners requested a stay of the proceedings in anticipation of filing this Petition for Writ of Mandamus [Docs. 1171, Ex. 6; 1175, Ex. 5; 1176, Ex. 4], which the court denied. [7/20/15 Tr. at 10-15, Ex. 2; Doc. 1179, Ex. 3].

THIS RECORD CLEARLY CALLS FOR MANDAMUS RELIEF

Bauman v. United States District Court, 557 F.2d 650 (9th Cir. 1977), sets forth five factors to consider in determining whether mandamus relief is appropriate:

- (1) The party seeking the writ has no other adequate means, such as direct appeal, to attain the relief desired.
- (2) The petitioner will be damaged or prejudiced in a way not correctable on appeal.
- (3) The district court's order is clearly erroneous as a matter of law.
- (4) The district court's order is an oft-repeated error, or manifests a persistent disregard of the federal rules.
- (5) The district court's order raises new and important problems, or issues of law of first impression.

Id. at 654-55; *see also Organization for Reform of Marijuana Laws v. Mullen*, 828 F.2d 536, 541 (4th Cir. 1987).

A petitioner need not satisfy all five *Bauman* factors. *Taiwan v. United States Dist. Ct. for No. Dist. Of Calif. (Tei Yan San)*, 128 F.3d 712, 719 (9th Cir. 1997) (mandamus granted even though fourth factor, recurring error, not satisfied); *Valley Broadcasting Co. v. United States Dist. Ct.*, 798 F.2d 1289, 1293 n. 3 (9th Cir. 1986) (where three of five *Bauman* factors were satisfied, deciding factor was whether trial court decision was clearly erroneous). The

third factor, a determination that the lower court's decision is clearly erroneous, is dispositive. *See Calderon v. United States Dist. Ct.*, 98 F.3d 1102, 1105 (9th Cir. 1996); *Survival Systems of Whittaker Corp. v. United States Dist. Ct.*, 825 F.2d 1416, 1418, fn. 1 (9th Cir. 1987).

The district court's refusal to recuse itself in this case satisfies all five of the *Bauman* factors, making mandamus relief appropriate. Petitioners address the third *Bauman* factor (clearly erroneous) first, however, because it is dispositive. *Calderon*, 98 F.3d at 1105; *Survival Systems*, 825 F.2d at 1418, n.1.

I. AUTOMATIC RECUSAL WAS REQUIRED; THUS THE COURT'S DENIAL WAS CLEARLY ERRONEOUS

"Clearly erroneous" in a mandamus analysis means the "district court has erred in deciding a question of law." *In re Cement Antitrust Litig. (MDL No. 296)*, 688 F.2d 1297, 1307 (9th Cir. 1982). But even if an error cannot be characterized as "clearly erroneous," this Court may exercise its mandamus authority where the issue is particularly important to trial court administration -- especially in the context of the denial of a recusal motion. *In re Cement Antitrust Litig.*, 688 F.2d at 1306-07 ("we see no legitimate reason for refraining from exercising our supervisory authority where we can determine that an error has been made but cannot, for whatever reason, characterize the error as 'clearly' erroneous.").

The district court's refusal to recuse itself here satisfies the third *Bauman* standard no matter how it is characterized. Petitioners sought recusal under 28 U.S.C. § 455, which is a self-enforcing provision – i.e., recusal does not require any action by the parties (though parties may also enforce it). *United States v. Holland*, 519 F.3d 909, 915 (9th Cir. 2008). Section 455 has two recusal provisions. Subsection (a) covers circumstances that *appear* to create a conflict of interest, even if there is no actual bias. *Preston v. United States*, 923 F.2d 731, 734 (9th Cir. 1991). The section states that a “judge . . . of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” 28 U.S.C. § 455(a). An objective standard applies to disqualification under § 455(a), so recusal is required when a “reasonable person with knowledge of all the facts would conclude the judge's impartiality might reasonably be questioned.” *Taylor v. Regents of Univ. of Cal.*, 993 F.2d 701, 712 (9th Cir. 1993).

Subsection (b) covers situations in which an *actual* conflict of interest exists, even if there is no appearance of impropriety. *Preston*, 923 F.2d at 734. It requires a judge to recuse himself, even if there is no appearance of impropriety:

- (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.

...

(4) He knows that he, individually, or as a fiduciary, or his spouse . . . has a financial interest in the subject matter in controversy . . . or any other interest that could be substantially affected by the outcome of the proceeding; [or]

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

...

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; [or]

(iv) Is to the judge's knowledge likely to be a material witness to the proceeding.

28 U.S.C. § 455(b)(1)-(5).⁹

A. Recusal is mandatory under § 455(b)(5)(iv) because the court turned himself and his wife into material witnesses.

Under 28 U.S.C. § 455(b)(5)(iv), a judge shall disqualify himself if he or his spouse is likely to be a material witness to the proceeding. Here, the court made both himself and the his wife material witnesses to the proceedings by *sua sponte* interrogating Sheriff Arpaio and Chief Deputy Sheridan about the Grissom investigation. [See Doc. 1117 (Exs. 5-8), Ex. 11]. The court examined

⁹ As is shown below, the trial court's conduct also falls outside the seven traditionally identified judicial actions this Court has enumerated "which will not ordinarily require recusal under § 455." See *United States v. Holland*, 519 F.3d 909, 914, n.5 (9th Cir. 2008).

Sheriff Arpaio and Chief Deputy Sheridan about why the MCSO investigated Mrs. Grissom's report that Mrs. Snow said her husband hated Sheriff Arpaio and would do anything to get Sheriff Arpaio out of office; and whether the MCSO investigated the court's family when ascertaining the truth of Mrs. Grissom's report of Mrs. Snow's comment. Although the Grissom report had nothing whatsoever to do with the contempt proceedings,¹⁰ the court examined the witnesses about this matter, directed Sheriff Arpaio to preserve and turn over all evidence related to this investigation, and directed his Monitor to further investigate the matter on behalf of the court.

As Petitioners noted in their recusal motion, if Mrs. Grissom's report is true (and all three Grissoms maintain it is), then both Judge Snow and his wife are material witnesses regarding whether he did in fact tell his wife that he hates the Sheriff and would do anything to get him out of office. It hardly needs stating how blatantly material it is to a (potentially criminal) contempt proceeding that the judge presiding over that proceeding hates the potential contemnor so much that the judge would do anything to make sure that party is never re-elected.

¹⁰ Even Magistrate Judge Boyle noted that the Grissom investigation was irrelevant to the contempt proceedings. [See Doc. 1053 at 6-7, Ex. 13].

Accordingly, on this record, the recusal motion was most certainly not just an “unsubstantiated suggestion of personal bias or prejudice” as the court below stated. [Doc. 1164 at 34:10-11, Ex. 8].¹¹ No reasonable person with knowledge of the facts could deny that the court injected himself and his wife as witnesses to an issue that should not have been, but is now apparently part of, the contempt proceeding. Not only that, the court has ordered the Monitor to ensure that documentation related to the Grissom investigation is preserved and produced to the court, thus making himself the investigator of this matter as well as the judge and the finder of fact. [See Doc. 1164 at 21:18-20, Ex. 8]. Under no circumstances could this conduct escape mandatory recusal under § 455(b)(5)(iv). *See United States v. Alabama*, 828 F.2d 1532, 1545 (11th Cir. 1987) (disqualification required when the judge was “forced to make factual findings about events in which he was an active participant.”).¹² The court’s refusal to recuse himself was clearly erroneous.

¹¹ The court’s order stated that “Movants do not suggest a single example of admissible testimony that the Court’s wife could offer.” [Doc. 1164 at 33:13-17, Ex. 8].

¹² Given this record, the court inaptly relied on a 2013 memo from the Sheriff’s former defense counsel for the proposition that recusal was unnecessary. Not only are counsel’s comments stale in light of the court having injected the Grissom issue into the contempt hearing, but one attorney’s subjective opinion is not a substitute for the objective impartial observer standard under § 455(a). *Clemens v. U.S. Dist. Ct. for Central Dist. of*

B. The court's expansion of the Monitor's powers and authority was in contravention of this Court's previous order, violated Petitioners' Due Process Rights, and violated § 455(b)(1), (a).

At a minimum, a court must provide an alleged contemnor with notice and an opportunity to be heard, *Int'l Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821, 827 (1994), which means prior disclosure and provision of documents to be used at trial, and prior identification of areas of examination. *See generally, Stuart v. United States*, 813 F.2d 243, 251 (9th Cir.1987), rev'd on other grounds, 489 U.S. 353 (1989); *DP Aviation v. Smiths Indus. Aerospace & Def. Sys. Ltd.*, 268 F.3d 829, 846-47 (9th Cir. 2001). Such notice is consistent with an alleged contemnor's right to present a defense. *See United States v. Powers*, 629 F.2d 619, 625 (9th Cir. 1980). Further, the law requires progressively greater procedural protections for indirect contempts of complex injunctions that necessitate more elaborate and in-depth fact finding, as in this case. *See Bagwell*, 512 U.S. 821 at 833-34.

The record is uncontested that Judge Snow ordered only *three* issues to be determined during the April 2015 OSC hearing. [Doc. 880 at 26, Ex. 18]. None of these issues included MCSO internal investigations. Moreover, neither the Court nor any other party gave notice that Sheriff Arpaio nor Chief Deputy

California, 428 F.3d 1175, 1178 (9th Cir. 2005) (In determining whether disqualification is proper, courts apply an objective test).

Sheridan would be questioned regarding the Grissom and Montgomery internal investigations or that MCSO's internal investigations would be at all relevant to the contempt proceedings. While a court may examine witnesses and comment on evidence, as the court noted [Doc. 1164 at 23:15-25, Ex. 8], the court cannot inquire into matters entirely *unrelated* to the current proceeding, and which *directly* implicates the court's impartiality. *United States v. Wilson*, 16 F.3d 1027, 1031 (9th Cir. 1994) (new trial necessary when judicial remarks and questioning of witnesses projected the "appearance of advocacy or partiality.").¹³

Finally, Judge Snow subsequently directed his Monitor to investigate further into these irrelevant matters. [Doc. 1117 (Ex. 9), Ex. 11; 5/14/15 Transcript at 49:15-21, 51, Ex. 12]. Over Petitioners' objections, Judge Snow ruled that his Monitor would not be "shackled" by Petitioners' constitutional rights. [See *id.* at 56, Ex. 12]. Indeed, Judge Snow indicated in his Order that he will continue an investigation into "the status of MCSO's remaining internal investigations," which includes the Grissom and Montgomery investigations. [See Doc. 1164 at 40, Ex. 8]. The Court's comments outlined above are

¹³ Petitioners have always maintained that it is the court's *sua sponte* inquiry into these irrelevant matters in violation of Petitioners' due process rights that demonstrates the perception of bias and requires recusal – not the due process violations themselves.

particularly alarming in light of the Ninth Circuit's recent decision limiting the powers of the Monitor to ensure they are "narrowly tailored to addressing only the relevant violations of federal law at issue here." *Melendres v. Arpaio*, 784 F.3d 1254, 1267 (9th Cir. 2015). In contempt proceedings, procedural protections such as prior notice are crucial "in view of the heightened potential for abuse posed by the contempt power." *Taylor v. Hayes*, 418 U.S. 488, 498 (1974). The court's failure to abide by these fundamental and basic constitutional requirements further demonstrates his bias under § 455(a) and (b)(1) requiring his disqualification and recusal.

C. The court, by *ex parte*, extrajudicial investigation, gained personal knowledge of disputed evidentiary facts requiring recusal under §§ 455(b)(1), (a).

During the contempt hearing, the court admitted that he engaged in improper, *ex parte* communication "over the lunch hour" by which he gained personal knowledge of disputed evidentiary facts he believed were relevant to the contempt hearing.¹⁴ [See Doc. 1164 at 20:4-12, Ex. 8].

Sheriff Arpaio had testified about the source of funding for the Montgomery Investigation, indicating that Maricopa County had not paid for investigatory personnel trips to Seattle for that investigation. [Doc. 1164 at

¹⁴ The court made clear in its order that it believed the funding of the Montgomery Investigation was at issue in the contempt hearing. [See Doc. 1164 at 27:21-28:6, Ex. 8].

20:4-9, Ex. 8]. During the lunch break, outside the presence of the parties, the court spoke with someone who told the court “that the Cold Case Posse may have separate finances from MCSO.” [*Id.* at 20:9-10, Ex. 8]. The court did not reveal to the parties the source of this information. [*Id.*, Ex. 8]. He simply stated on return from lunch: “*I was told over lunch* that posse funds like Mr. Zullo – Mr. Zullo’s the head of one of your posses ... *I was told* that you also have various sources of funding within the MCSO, like the Cold Case Posse has its own funds. Is that possible?” [4/23/15 Tr. 657:20-21, 657:25-58:2 (emphasis added), Ex. 15].¹⁵ Clearly, by the court’s own admission, he had received new information, *ex parte*, regarding matters directly related to, and which the court believed was at issue in, the contempt hearing.¹⁶ The court then interrogated Sheriff Arpaio on the record regarding this new information. [4/23/15 Tr. at 657:18-60:8, Ex. 15].¹⁷

¹⁵ It was not until much later, when the court issued the order denying recusal, that the source of those *ex parte* communications (the Monitor) was revealed. [See Doc. 1164 at 20:9-10, Ex. 8].

¹⁶ The court attempted to justify its *ex parte* communication with the Monitor as part of the Monitor’s role to “oversee and coordinate Defendants’ compliance with existing judicial orders on the Court’s behalf.” [Doc. 1164 at 20:15-17, Ex. 8]. But nothing in the court’s existing judicial orders gives the Monitor a right or duty to advise the court regarding the accuracy of testimony given during the contempt proceeding. See *Melendres v. Arpaio*, No. CV-07-02513-PHX-GMS, 2013 WL 5498218, at *32, ¶ 126 (D. Ariz. Oct. 2, 2013).

¹⁷ Thus, the information the court received was, in fact, from an “extrajudicial source,” contrary to the court’s statement in its order denying

Under 28 U.S.C. § 455(b)(1), a judge *shall* disqualify himself “[w]here he has, . . . *personal knowledge* of disputed evidentiary facts concerning the proceeding.” (Emphasis added). The information relayed by the Monitor to the court is a disputed fact. When the court directly questioned Sheriff Arpaio regarding whether the Cold Case Posse has its own funds, Sheriff Arpaio answered “No.” [4/23/15 Tr. 657:25-58:3, Ex. 15]. Nothing in the Sheriff’s further testimony contradicted this statement. [See *id.* at 657-58, Ex. 15]. Moreover, as stated in the previous section, the relevance of *any* fact regarding the Montgomery Investigation to the contempt proceedings is disputed. The court, therefore, violated § 455(b)(1) by gaining personal knowledge of disputed evidentiary facts through an *ex parte* communication with the Monitor during the lunch break of the contempt hearing.

The Court’s *ex parte* conversation with the Monitor itself also requires recusal under § 455(a) because “[a] judge should ... except as authorized by law, neither initiate nor consider *ex parte* communications on the merits, or

recusal. [Doc. 1164 at 24:24-25:12, Ex. 8]. Statements received by a judge outside of judicial proceedings are extrajudicial. See *In the Matter of Edgar v. K.L., et al.*, 93 F.3d 256, 259 (7th Cir. 1996) (“Knowledge received in other ways, which can be neither accurately stated nor fully tested, is ‘extrajudicial.’ . . . What information passed to the judge, and how reliable it may have been, are now unknowable. This is ‘personal’ knowledge no less than if the judge had decided to take an undercover tour of a mental institution to see how the patients were treated.”).

procedures affecting the merits, of a pending or impending proceeding.” *In the Matter of Edgar v. K.L., et al.*, 93 F.3d 256, 258 (7th Cir. 1996) (quotations omitted). Regardless of whether Sheriff Arpaio’s subsequent testimony confirmed or refuted the Monitor’s information, it is the court’s *ex parte* conversation that gave him personal knowledge regarding evidentiary matters at issue that constitutes the appearance of impropriety and requires recusal. [See Doc. 1164 at 20:10-12, Ex. 8]. See, e.g., *SCA Services, Inc. v. Morgan*, 557 F.2d 110, 116 (7th Cir. 1977), where recusal was required regardless of whether *ex parte* communications confirmed accurate information:

[T]he judge's ‘Memorandum of Decision’ suggests that he made a confidential inquiry, presumably to his brother, to determine in what capacity Donald A. Morgan was involved in this case. Counsel were not present and were unaware of the inquiry at the time it was made. While it is understandable why the judge may have felt his brother could present the most accurate evidence as to his role in the pending litigation, the judge’s inquiry creates an impression of private consultation and appearance of partiality which does not reassure a public already skeptical of lawyers and the legal system.

Id.; see also *Edgar*, 93 F.3d at 259 (mandatory disqualification under § 455(b)(1) required when trial judge was briefed off the record regarding the litigation and declined to inform parties about the briefing’s contents); *Price Bros. Co. v. Philadelphia Gear Corp.*, 629 F.2d 444, 446-47 (6th Cir. 1980)

(noting that gaining information from a law clerk's independent investigation of disputed facts would be a violation of Canon 3(c)(1)(a) and § 455).

Surely a thoughtful observer aware of all the facts (the standard under § 455(a), *see Liljeberg v. Health Svcs. Acq. Corp.*, 486 U.S. 847, 865 (1988)) would conclude that a preview of evidence carries an unacceptable potential for compromising impartiality. *Edgar*, 93 F.3d at 259-60. That is exactly what occurred here. Moreover, the appearance of impropriety is more intensified because the record is not even clear that the Monitor gave Judge Snow accurate information, as the court claimed. [Doc. 1164, 20:10-12, Ex. 8]. In short, the court's conferring *ex parte* during the lunch hour about disputed facts to the proceeding, not to mention its subsequent failure to disclose the details of that conference, required recusal under § 455(b)(1) and (a). The court's refusal to do so was clearly erroneous under *Bauman*, warranting mandamus relief.

D. Recusal is mandatory under § 455(b)(5)(iii) because Judge Snow's brother-in-law is an equity partner in Covington & Burling, counsel for Plaintiffs.

1. The court's brother-in-law's equity partnership interest in Plaintiffs' law firm creates an unwaivable conflict under § 455(b)(5)(iii).

28 U.S.C. § 455(b)(5)(iii) requires that a Judge shall disqualify himself when a “[p]erson within the third degree of relationship of [the Judge or his spouse]...[i]s known by the judge to have an interest that could be substantially

affected by the outcome of the proceeding.” *See also* Code of Conduct for United States Judges, Canon 3(C)(1)(d)(iii) (mirroring § 455(b)(5)(iii)). Commentary to Canon 3C(1)(d)(ii) provides that “if ... the relative is known by the Judge to have an interest in the law firm that could be ‘substantially affected by the outcome of the proceeding’ under Canon 3C(1)(d)(iii), the judge’s disqualification is *required*.” (emphasis added). Judge Snow’s brother-in-law is an equity partner with Covington & Burling, the Plaintiffs’ law firm. As an equity partner in the Plaintiffs’ counsel’s law firm, Judge Snow’s brother-in-law has an interest in this case that could be “substantially affected by the outcome of the proceeding,” requiring the court’s mandatory recusal.

Judicial Ethics Advisory Opinion No. 58¹⁸ states a categorical rule of recusal when a relative within the third degree of relationship is an equity partner in a law firm in the case, notwithstanding his residence in a different office and the lack of any involvement or effect on his income. *Fiore v. Apollo Educ. Grp. Inc.*, 2015 WL 1883980, at *2 (D. Ariz. Apr. 24, 2015). The Committee concluded that:

¹⁸ “The Judicial Conference of the United States has established a committee, consisting of federal judges, ‘[t]o provide advice on the application of the Code of Conduct for United States Judges.’ Jurisdictional Statement of the Committee on Codes of Conduct of the Judicial Conference of the United States. Although judges are neither required to consult the committee nor bound by its rulings, the committee provides invaluable guidance and a detached viewpoint.” *In re Bernard*, 31 F.3d 842, 844 (9th Cir. 1994).

an equity partner in a law firm generally has “an interest that could be substantially affected by the outcome of the proceeding” **in all cases where the law firm represents a party before the court.** Therefore, “if the relative ... is an equity partner in a law firm that represents a party, the judge must recuse.”

Id. (emphasis added) (quotations omitted). As the Committee noted, “one might reasonably question a judge's impartiality when his or her relative is an equity partner in a law firm that represents a party before that court.” *Id.* at *3. Other cases are in accord. See *Postashnick v. Port City Constr. Co.*, 609 F.2d 1101, 1113 (5th Cir. 1980) (“when a partner in a law firm is related to a judge within the third degree, that partner will ***always be*** ‘known by the judge to have an interest that could be substantially affected by the outcome’ of a proceeding involving the partner's firm.”); *SCA Services, Inc. v. Morgan*, 557 F.2d 110, 115 (7th Cir. 1977) (recusal required because judge’s brother was a senior partner in a party’s firm, though not directly involved in the case).

In refusing to recuse himself, Judge Snow stated that “the Advisory Opinion’s per se rule is contrary to the Code of Conduct and the commentaries thereto which make clear that ‘[t]he fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge.’” [Doc. 1164, n. 18, Ex. 8; Doc. 542, Ex. 23]. Respectfully, this misinterprets Advisory Opinion No. 58. The Advisory

Opinion does not state that *relation alone* constitutes disqualifying interest, but rather, an *equity interest* in the firm does. In fact, Opinion 58 notes that “recusal is not mandated” when the family member in the firm before the court is “an associate or non-equity partner . . . [whose] compensation is in no manner dependent upon the result of the case.” Opinion 58 thus does not conflict with the commentary to the Judicial Canons, as the court posited.¹⁹

In refusing to recuse himself, the court also relied on his June 2012 order, which noted that recusal was not required at the time because there was only a “remote possibility” that Plaintiffs would be awarded attorney’s fees (and if they did it would “be very small”); thus it “was speculative” whether the court’s brother-in-law had a financial interest in the outcome of the case. [Doc. 542, Ex. 23]. As of 2015, however, Covington & Burling has been awarded nearly \$3.5 million in fees and costs [Doc. 742, Ex. 20], and have requested nearly half a million dollars more in fees and costs for the appeal of the bench trial.²⁰ This

¹⁹ The district judge in *Fiore v. Apollo Educ. Grp. Inc.*, 2015 WL 1883980, at *2 (D. Ariz. Apr. 24, 2015), refused to recuse himself citing this inaccurate ruling by Judge Snow, and failing to consider adequately the equity partner’s non-economic interests. *Id.* at *2-3. In addition, *Fiore* did not involve a multi-million dollar award of fees and costs to the judge’s relative’s law firm.

²⁰ See Ninth Circuit Case No. 13-16285, 13-17238, Dkt. 89, Declaration of Stanley Young, Ex. E. The Court can take judicial notice of this fee request. *U.S. ex rel Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (Federal courts may “take notice of proceedings in other

is hardly a “very small” amount. *See* Canon 3(C)(3)(c) (holding that “‘financial interest’ means ownership of a legal or equitable interest, *however small ...*”) (emphasis added). And the record is devoid of evidence that the court’s brother-in-law did not receive some financial benefit (either directly or indirectly) from this substantial award.

Regardless, as the Advisory Committee notes, § 455(b)(5)(iii) serves to protect both economic and *non-economic* interests.²¹ Indeed,

This “general interest” reflects the big picture—the equity partner’s stake in the law firm’s profits as well as in its continued existence, which requires lasting client relationships and a respected name in the profession. An equity partner stands to benefit when his or her law firm does good work no matter who does that work or where that work is done.

Fiore, 2015 WL 1883980 at *3; *see also In re Kansas Pub. Employees Ret. Sys.*, 85 F.3d 1353, 1359 (8th Cir. 1996) (“The interest described in § 455(b)(5)(iii) includes noneconomic as well as economic interests.”).

In short, based on this record, the statutes, Advisory Opinion 58, and relevant case authority, the court’s recusal is mandated. The court’s brother-in-

courts, both within and without the federal judicial system, if those proceedings have a direct relation to the matters at issue.”).

²¹ The Committee has rejected the line of cases from the Second Circuit that focuses only on economic interests. *Fiore*, 2015 WL 1883980 at *3; *see also In re Kansas Pub. Employees Ret. Sys.*, 85 F.3d 1353, 1359 (8th Cir. 1996) (“The interest described in § 455(b)(5)(iii) includes noneconomic as well as economic interests.”)

law has both economic and noneconomic interests that could be substantially affected by the outcome of the proceeding.²² Judge Snow's failure to recuse himself was, therefore, clearly erroneous.

2. Petitioners did not waive the conflict.

One of the court's reasons for refusing to recuse was that the Sheriff waived the "appearance of impartiality" conflict back in 2012. [Doc. 1164, pp. 36-37, Ex. 8; Doc. 541, Ex. 24]. This was incorrect for two reasons (aside from the enormous attorneys' fees and costs award recently granted to Covington & Burling, which greatly enhanced the conflict). First, conflicts under § 455(b)(5)(iii), such as those occurring when the court's relative has an interest that could be affected by the proceeding's outcome, are simply not waivable.²³

²² Even if this Court is disinclined to adopt a categorical rule of recusal expressed under Advisory Opinion No. 58, based the specific facts of this case, recusal was still necessary under 455(b)(5)(iii).

²³ Moreover, courts generally frown on waiver from counsel because "Judges should not be able to pressure a waiver of disqualification by figuratively cloaking the judge's iron fist in a velvet glove." Ronald D. Rotunda & John S. Dzienkowski, *LEGAL ETHICS: THE LAWYER'S DESKBOOK ON PROFESSIONAL RESPONSIBILITY* § 10.2-2.11; *see also United States v. Kelly*, 888 F.2d 732, 745-46 (11th Cir. 1989) ("as a general rule, 'a federal judge should reach his own determination [on recusal], without calling upon counsel to express their views.... The too frequent practice of advising counsel of a possible conflict, and asking counsel to indicate their approval of a judge's remaining in a particular case is fraught with potential coercive elements which make this practice undesirable.'") (quoting *Matter of National Union Fire Ins. Co.*, 839 F.2d 1226, 1231 (7th Cir.1988)); *see also Andros Compania Maritima, S.A. v. Marc Rich & Co.*, A.G., 579 F.2d 691, 699 (2d Cir.1978) ("Generally, a

28 U.S.C. § 455(b)(5)(iii), (e); *Postashnick v. Port City Constr. Co.*, 609 F.2d 1101, 1115 (5th Cir. 1980) (“The express language of section 455(e) dictates that a judge cannot accept a waiver of disqualification on section 455(b)(5)(iii) grounds, such as when a relative of the judge has an interest which could be affected by the outcome of the proceeding.”). Thus the court, as a matter of law, could not accept a waiver of the conflict from Sheriff Arpaio. Second, the potential civil contemnors, including Petitioner Chief Deputy Sheridan, could not have waived anything, as they were not parties to the case in 2012. They were not civilly or criminally at risk until the court made them a part of contempt proceedings in 2015. These individuals have the right to be separately informed of and have a chance to object to the conflict.

Moreover, if this conflict was waivable (which it is not), before the contempt proceedings began, the court should have: (1) disclosed the conflict, (2) permitted counsel to confer with their clients outside his presence, and (3) provide either a written waiver or note their waiver on the record. *See* Canon 3D. At a minimum, the court’s failure to follow this process creates the appearance of bias under § 455(a) and violates the ethical canons.

federal judge may not state for the record possible disqualifying circumstances and ask the parties to decide whether they want him to continue.”).

Finally, recusal was required regardless of the courts' timeliness concerns. Our courts have an "unwavering commitment to the perception of fairness in the judicial process." *United States v. O'Brien*, 18 F. Supp. 3d 25, 32 (D. Mass. 2014) (finding recusal motion untimely but nevertheless addressing the merits and finding recusal necessary); *S.E.C. v. Loving Spirit Found. Inc.*, 392 F.3d 486, 494 (D.C.Cir.2004) (recusal motion untimely but addressing merits). The court therefore had a continuing duty under § 455 to recuse himself, regardless of the timeliness of the motion. *United States v. Sibla*, 624 F.2d 864, 868 (9th Cir. 1980); *Bradley v. Milliken*, 426 F.Supp. 929, 931 (E.D. Mich. 1977).

E. An objective independent observer would recognize the appearance of bias under § 455(a).

On this record, a reasonably objective observer would perceive the appearance of bias by the court. 28 U.S.C. § 455(a); *Preston v. United States*, 923 F.2d 731, 734 (9th Cir. 1991) ("The relevant test for recusal under § 455(a) is whether "a reasonable person would have a reasonable basis for questioning the judge's impartiality, not whether the judge is in fact impartial."); *United States v. Holland*, 519 F.3d 909, 911 (9th Cir. 2008) (when a case is close, the balance should tip in favor of recusal).

- Sheriff Arpaio and Chief Deputy Sheridan consented to a finding of civil contempt.

- The court ordered the Sheriff to put “skin in the game” by pledging his own funds to settle the contempt allegations, though the suit is only against him in his official capacity.
- The court *sua sponte* turned the contempt hearing into an investigation into matters personal to the court but entirely unrelated to the preliminary injunction, in violation of Petitioners’ due process rights, cross-examining the witnesses on a matter involving the judge’s wife, thereby making himself and his spouse material witnesses.²⁴
- The court also inquired into MCSO’s investigation involving Dennis Montgomery, which the Court characterized as a “bogus” conspiracy theory to discredit the court.²⁵

²⁴ The court repeatedly insinuated – with no evidence whatsoever -- that Petitioners “may have hired a confidential informant at least partly in an attempt to discredit this Court by linking it to a speculative conspiracy” and that “to the extent that Movants are responsible for creating the circumstances that they now offer as grounds for their Motion, the Montgomery materials provide no basis for judicial recusal.” [See Doc. 1164 at 24:19-20, 29:4-16, Ex. 8]. The accusation is baseless, as the record is entirely devoid of any evidence that Petitioners ever solicited information from either the Grissom family or Dennis Montgomery. It is undisputed that two different sources voluntarily approached MCSO with information regarding Judge Snow and his alleged bias against Sheriff Arpaio. The Grissom/Montgomery matters would never have been mentioned had the court not injected them into the proceeding. From the court’s scornful remarks alone, a reasonable observer in this case *would* find an appearance of bias under § 455(a). *Fairley v. Andrews*, 423 F. Supp. 2d 800, 821 (N.D. Ill. 2006) (“In this case, none of this Court's individual statements, when viewed in their proper context, warrant recusal under section 455(a). However, in doing the required self-evaluation under this section, this Court finds that all of this Court's statements and interactions with Defendants in this case, taken together, may give pause to a non-legal observer, not versed in the ways of the courtroom and the risks of litigation.”).

²⁵ See 5/14/15 Tr. at 46:23-47:7, Ex. 12.

- The court, clearly angry over the suggestion that he hates the Sheriff and would do what it takes to get him out of office, morphed from objective adjudicator into an advocate, giving his own testimony, asking leading questions, becoming argumentative with the putative contemnors when they testified, and taking “evidence” from outside of court.
- The court then directed his Monitor to investigate further into these irrelevant matters after the contempt hearing, refusing to “shackle” the Monitor when the movants objected to the unprecedented and unbridled power given to the Monitor, despite recently being reversed by the Ninth Circuit for giving the Monitor too much authority.
- In denying recusal, the court indicated and has in fact continued to, investigate the status of “MCSO’s remaining internal investigations” (which include the irrelevant matters).

These are the facts on which the recusal motion was based.²⁶ And based on the foregoing facts, a reasonably objective observer would perceive the appearance of bias necessitating the court’s recusal.²⁷ *See United States v. Conforte*, 624

²⁶ Contrary to the court’s order [Doc. 1164 at 26:10-12, 25, 33, Ex. 8], the motion was thus not based on “[r]umor, speculation, beliefs, conclusions, innuendo, suspicion, opinion, or similar non-factual matters.”

²⁷ Judge Snow impermissibly cited statements by Sheriff Arpaio, Chief Deputy Sheridan, and their defense counsel in concluding that a reasonable person would not believe recusal necessary under 28 U.S.C. § 455(a). [*See e.g.*, Doc. 1164 at 26-27, 31, Ex. 8]. A party to the litigation is not an objective impartial observer under § 455(a). *In re U.S.*, 572 F.3d 301, 313 n.12 (7th Cir. 2009) (rejecting trial court’s reliance on fact that party did not desire recusal as meeting the objective standard under 28 U.S.C. § 455(a)). Moreover, the

F.2d 869, 881 (9th Cir. 1980) (“It is a general rule that the appearance of partiality is as dangerous as the fact of it.”); *Alexander v. Primerica Holdings, Inc.*, 10 F.3d 155, 163, 166 (3d Cir. 1993) (“When the judge is the actual trier of fact, the need to preserve the appearance of impartiality is especially pronounced.”); *see also In re Mason*, 916 F.2d 384, 386 (7th Cir. 1990) (an independent outside observer is “less inclined to credit judges’ impartiality and mental discipline than the judiciary....”); *In re Faulkner*, 856 F.2d 716, 721 (5th Cir. 1998) (“[p]eople who have not served on the bench are often all too willing to indulge suspicions and doubts concerning the integrity of judges.”); *Holland*, 519 F.3d at 911 (To the extent the facts are disputed, the balance tips in favor of recusal).²⁸

The court also misplaced reliance on *Liteky v. United States*, 510 U.S. 540 (1994), for the proposition that Petitioners’ recusal motion did not offer a valid basis for bias or partiality. [See Doc. 1164 at 15:9-20, 24:24-25:10, Ex.

statements cited were made *before* the court injected irrelevant matters into the proceeding, before the court gave unbridled power to the Monitor, and before the enormous award of attorneys’ fees to Plaintiffs’ counsel.

²⁸ Judge Murguia previously recused herself under § 455(a), because comments allegedly made by her *sister* and her sister’s *organization* were highly disparaging of Sheriff Arpaio. [Doc. 138 at 26-27, Ex. 28]. Recusal in this instance is even stronger under § 455(a) because the undisputed allegations from the Grissoms demonstrate that Judge Snow *himself* may have made highly disparaging comments regarding Defendant Arpaio. [See Doc. 1117 (Exs. 5-8), Ex. 11].

8]. *Liteky* actually recognizes that judicial rulings and comments *do* provide a basis for recusal under § 455, and a recusal motion is *not* required to be grounded in an extrajudicial source. *Liteky*, 510 U.S. at 551 (an extrajudicial source is a “*common* basis [for disqualification] but not the *exclusive* one.”) (emphasis added); *id.* at 541 (judicial rulings “*almost* never constitute a valid basis for a bias or partiality motion.”) (emphasis added); *id.* at 555 (“[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings” “constitute a basis for a bias or partiality motion” if “they display a deep-seated favoritism or antagonism that would make fair judgment impossible.”). Indeed, the *Liteky* Court explained that remarks made during judicial proceedings will require disqualification when they: (1) reveal an extrajudicial bias, or (2) reveal an excessive bias arising from information acquired during judicial proceedings. *Id.* at 555. We have both here. The court’s obvious anger at the Grissom investigation (seeing as Mrs. Snow’s statement to Mrs. Grissom clouds any reasonable observer’s perception of the court’s objectivity in this case), coupled with: (a) the court’s reactive cross-examination of the witnesses into Grissom (and other) matters, (b) giving the Monitor unbridled authority to intrude into every investigation at MCSO (regardless of its relevance to the preliminary injunction or contempt hearing), (c) the court’s insistence that it was going to

continue investigating these irrelevant matters, and (d) the court's unfounded accusation that Petitioners might have hired a confidential informant to try to discredit the court – at the very minimum give the perception of both extrajudicial bias and bias arising from information acquired during the proceedings. Recusal was required and its refusal was clear error.²⁹

II. PETITIONERS HAVE NO OTHER ADEQUATE REMEDY TO OBTAIN RELIEF.

This Court has recognized that a denial of a motion for recusal is exactly the kind of “exceptional circumstance” for which a writ of mandamus is designed:

It is not necessary to create a general rule permitting immediate appeal of all recusal decisions in order to resolve the exceptional situations. *See Firestone Tire & Rubber Co. v. Risjord*, [449 U.S. 368, 378 n. 13, 101 S.Ct. 669, 676 n. 13, 66 L.Ed.2d 571 (1981)]. Ultimately, if dissatisfied with the district judge's decision and confident that the litigation will be greatly disrupted, a party may seek a writ of mandamus from the court of appeals. ***It is for just such an exceptional circumstance that the writ was designed.***

²⁹ Even if bias had to be based on an extrajudicial source, we have those here, including (but not limited to): (1) an *ex parte* communication from the Monitor regarding MCSO funding sources, (2) statements from the Grissoms and Dennis Montgomery, and (3) the court's brother-in-law's equity partnership at Covington & Burling. These are all extrajudicial sources. *See United States v. Johnson*, 610 F.3d 1138, 1147 (9th Cir. 2010) (describing an extrajudicial source as “something other than rulings, opinions formed or statements made by the judge during the course of trial”).

In re Cement Antitrust Litig., (MDL No. 296), 673 F.2d 1020, 1025 (9th Cir. 1982) (emphasis added). Moreover, given that this case is in the remedial stage of litigation, the district court will not be issuing a “final order” that can be appealed. Petitioners have no remedy other than mandamus to obtain relief.

III. PETITIONERS WILL BE PREJUDICED IN A WAY NOT CORRECTABLE ON APPEAL

Absent mandamus relief, Petitioners will be prejudiced in a way not correctable on later appeal. It is axiomatic that Judge Snow’s continued participation in the contempt proceedings and compliance phase of this action endangers not only the Petitioners’ rights, but also the appearance of the court’s fairness and impartiality. For this reason, Petitioners requested a stay of all proceedings pending resolution of this Petition [Docs. 1171, Ex. 6; 1176, Ex. 4], which the court denied. [7/20/15 at 10-15, Ex. 2; Doc. 1179, Ex. 3]. Because the compliance and contempt proceedings are continuing, mandamus relief is necessary to prevent further prejudice to Petitioners, which cannot be corrected on later appeal.

IV. THE ORDER REFUSING RECUSAL MANIFESTS PERSISTENT DISREGARD OF THE FEDERAL RULES

The district court’s refusal to recuse itself comes only after the court engaged in an *ex parte* conversation and then questioned witnesses regarding that *ex parte* information, refused to disclose the source of its information until

much later, injected irrelevant yet very personal matters (personal to the court) into the contempt hearing, and gave the Monitor unbridled and unprecedented authority to investigate those matters. This evidences persistent disregard of not only the federal rules, but also the parties' due process rights.

V. THE ORDER REFUSING RECUSAL RAISES NEW AND IMPORTANT ISSUES OF LAW OF FIRST IMPRESSION.

This Court has not yet adopted the Committee's Advisory Opinion No. 58, setting forth a categorical rule of recusal when a relative within the third degree of relationship is an equity partner in a law firm in the case. As such, this is an important legal issue of first impression that satisfies the last element of *Bauman* test.

VI. PETITIONERS' RECUSAL MOTION WAS TIMELY.

The district court repeatedly asserted that Petitioners' recusal motion was untimely because Petitioners knew about the Grissom/Montgomery investigations for some time prior to their recusal motion. [Doc. 1164 at 2, 27, 32, and 33, Ex. 8].³⁰ In truth, the recusal motion was timely. It was filed within one month of the court's April 23, 2015 injection of the Grissom and

³⁰ A motion for recusal under § 455(a) does not have a strict time deadline. *U.S. v. Kehlbeck*, 766 F.Supp. 707 (S.D. Ind. 1990); *see also Conforte*, 624 F.2d at 880 ("we leave open here the question whether timeliness may be disregarded in exceptional circumstances.").

Montgomery matters into the contempt proceedings.³¹ Furthermore, the court's subsequent order directing that the Monitor be given unfettered access to investigate these and other irrelevant matters did not occur until May 14, 2015. The recusal motion was filed within a week of that, on May 22, 2015. [Doc. 1117, Ex. 11]. Recusal motions are timely even if filed a year or more after the case begins, where the grounds for recusal do not arise until later. *See, e.g., Preston v. United States*, 923 F.2d 731, 733 (9th Cir. 1991) (recusal motion timely when filed eighteen months after assignment to trial judge; grounds for recusal did not arise until ten days before recusal motion filed); *Edgar v. K.L.*, 93 F.3d 256, 257-58 (7th Cir. 1996) (recusal motion timely after a year because defendants, only two weeks before the motion, learned that judge was discussing merits of case with experts). Here, the recusal motion was not untimely.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request the Court to (1) issue a writ of mandamus directing Judge Snow to recuse himself from all proceedings in this action and (2) appoint a new judge to preside over this case.

³¹ Petitioners never argued that the grounds for recusal arose out of the Grissom/Montgomery investigations themselves. It was the court's improper inquiry into these matters during the April 2015 contempt hearings that suddenly made these investigations supposedly relevant to the proceedings.

RESPECTFULLY SUBMITTED this 6th day of August, 2015.

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/s/ John T. Masterson

Attorney for

Defendants/Petitioners Joseph M. Arpaio and
Gerard A. Sheridan

Date

August 6, 2015

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing PETITION FOR WRIT OF MANDAMUS with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on the 6th day of August, 2015.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

/s/Karen Gawel

Exhibit 16

Transcript of
Recorded Interview of Karen Grissom
Conducted by Don Vogel
on October 26, 2013

DESERT HILLS REPORTING, INC.
2415 E. CAMELBACK ROAD
SUITE 700
PHOENIX, ARIZONA 85016
BY: TERESE M. HEISIG/RPR
CERTIFIED COURT REPORTER 50378
TRANSCRIPTIONIST

Karen Grissom - 10/26/2013

1 DON VOGEL: Okay. The tape recorder is
2 going. It is Saturday morning, October 26th. It is
3 just about 9 o'clock in the morning. My name is Don
4 Vogel. And can you go ahead and say your name for the
5 tape?

6 KAREN GRISSOM: Karen Grissom.

7 DON VOGEL: Okay. Karen, just to kind of
8 bring the tape up to speed, I've been here somewhere in
9 the neighborhood of five to ten minutes.

10 KAREN GRISSOM: Yes.

11 DON VOGEL: Um, I explained to you that I was
12 here because of some information that has been kind of
13 passed to me through some different channels of
14 Mr. Casey's office that, um, you may have heard a
15 conversation in a restaurant some time back when you
16 were with your husband, and it may involve a situation
17 involving Sheriff Arpaio.

18 KAREN GRISSOM: Yes.

19 DON VOGEL: And I've told you that I do not
20 work for the sheriff's office. I'm a licensed private
21 investigator. I -- I spoke with you a little bit about
22 my background so that you could be comfortable. I told
23 you that I have -- I have been retired from a local
24 police department, not the sheriff's office, for
25 eight years. And we just kind of talked about wanting

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1 to, I guess, get a -- get an understanding of exactly
2 what it is that you heard on tape, and you have
3 knowledge that this is being recorded.

4 KAREN GRISSOM: Yes.

5 DON VOGEL: Okay. Is there anything that we
6 talked about that I haven't kind of included in the
7 summary?

8 KAREN GRISSOM: No.

9 DON VOGEL: Okay. Karen, how old are you
10 roughly, if you don't want to say.

11 KAREN GRISSOM: I just turned 64.

12 DON VOGEL: Okay. Um, and I know you are
13 short on time this morning, so we will do this as
14 quickly as we can. We may have to come back and touch
15 up some of the details when we talk with your -- with
16 your husband Dale. But, um, you had -- do you remember
17 this conversation -- we haven't discussed it, but this
18 conversation that, obviously, I'm here to talk with you
19 about.

20 KAREN GRISSOM: Yes.

21 DON VOGEL: When -- do you remember when that
22 occurred?

23 KAREN GRISSOM: It was last year. I don't
24 know -- I don't remember if it was in the summer or
25 beginning of the summer.

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1 DON VOGEL: Okay. So somewhere in the area
2 of maybe 13 to 16 months ago.

3 KAREN GRISSOM: Yes.

4 DON VOGEL: Okay. And where did the
5 conversation occur.

6 KAREN GRISSOM: At Sombrero's Restaurant.

7 DON VOGEL: And which Sombrero's Restaurant
8 were you at?

9 KAREN GRISSOM: On Mill Avenue and Baseline.

10 DON VOGEL: Okay. Do you remember what day
11 of the week it was.

12 KAREN GRISSOM: No, I don't.

13 DON VOGEL: Okay. Do you remember
14 approximately what time of day it was.

15 KAREN GRISSOM: Lunchtime, because we were
16 there for lunch.

17 DON VOGEL: Okay.

18 KAREN GRISSOM: It had to have been probably
19 on a Saturday.

20 DON VOGEL: Okay.

21 KAREN GRISSOM: 3:00, you know, that is when
22 we probably go.

23 DON VOGEL: Okay. And, um, you were with
24 your husband, obviously.

25 KAREN GRISSOM: Yes.

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1 DON VOGEL: Was there anybody else with you
2 when you got to the restaurant.

3 KAREN GRISSOM: There were -- I think our son
4 was with us.

5 DON VOGEL: And what is your son's name.

6 KAREN GRISSOM: Scott Grissom.

7 DON VOGEL: And how old is Scott.

8 KAREN GRISSOM: He is 40.

9 DON VOGEL: Okay. And where does Scott
10 reside.

11 KAREN GRISSOM: In California.

12 DON VOGEL: Can you tell me what city.

13 KAREN GRISSOM: He is in Oxnard.

14 DON VOGEL: Okay. And if it would become
15 necessary, would you be able to give me his cell phone
16 number for him.

17 KAREN GRISSOM: Yes.

18 DON VOGEL: Okay. So you, your husband, and
19 your son Scott were at Sombrero's Restaurant. Do you
20 remember what you were doing on that side of town?

21 KAREN GRISSOM: Ah, we go over there quite a
22 bit to eat, and, um, we were -- that is why we go there.
23 We have been going there since they opened.

24 DON VOGEL: Okay. And even though you live
25 here on the west side, that is really not that far of a

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1 drive from here.

2 KAREN GRISSOM: No, it is not.

3 DON VOGEL: Within 10 to 15 minutes probably,
4 maybe 15 minutes.

5 Um, where were you seated at in the
6 restaurant? I'm pretty familiar with that restaurant.

7 KAREN GRISSOM: We were over on the south
8 side of the door --

9 DON VOGEL: Okay. So when you --

10 KAREN GRISSOM: -- at the window.

11 DON VOGEL: Okay. So when you walk in, there
12 is a tremendous amount of seating to your left, and
13 there is just a few tables off to your --

14 KAREN GRISSOM: On the right.

15 DON VOGEL: -- right. And you were off to
16 the right?

17 KAREN GRISSOM: Right next to the window.

18 DON VOGEL: Okay. And do you remember if
19 that is a booth or a table.

20 KAREN GRISSOM: Table.

21 DON VOGEL: Okay. Um, what happened?

22 KAREN GRISSOM: We were just sitting there
23 eating our lunch, and, um, this girl, tall girl comes
24 up. I didn't know who she was, and she asked, Irene? I
25 says, no, I'm Karen.

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1 DON VOGEL: Okay. So she asked you if you
2 were Irene?

3 KAREN GRISSOM: My sister, my younger sister.

4 DON VOGEL: Okay. Is Irene -- and you had
5 mentioned when I got here that Irene -- one of your
6 sisters is a paralegal.

7 KAREN GRISSOM: That is her.

8 DON VOGEL: Is that -- okay. What last name
9 does she go by now.

10 KAREN GRISSOM: Winterburn.

11 DON VOGEL: Okay. So she asked if you were
12 Irene. Do you look like Irene?

13 KAREN GRISSOM: Yes.

14 DON VOGEL: Okay. So is -- does that -- does
15 that happen in the past, where people have --

16 KAREN GRISSOM: Yes.

17 DON VOGEL: -- confused you guys?

18 KAREN GRISSOM: Even -- yeah, even at church.

19 DON VOGEL: Okay. Um, so she asked if you
20 were Irene, and you were -- that is nothing new, so you
21 immediately knew that --

22 KAREN GRISSOM: M'hum.

23 DON VOGEL: -- somebody was confusing you and
24 your sister. What happened next.

25 KAREN GRISSOM: And she -- and then I asked

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1 her who she was, and she said Sheri Smoch -- Snow.

2 DON VOGEL: Okay. She said Sheri Smoch. Did
3 she say know, too, or are you just adding that.

4 KAREN GRISSOM: No. Um, she said Sheri, um,
5 Snow, and I says, well, I don't know you. And, oh, she
6 said I'm Sheri Smoch. Remember my family.

7 DON VOGEL: Okay.

8 KAREN GRISSOM: From Yuma.

9 DON VOGEL: Okay.

10 KAREN GRISSOM: I said, oh, yeah, I remember
11 your dad. He was a railroad man.

12 DON VOGEL: What was the dad's name?

13 KAREN GRISSOM: Um, I don't remember.

14 DON VOGEL: I thought you just said it.

15 KAREN GRISSOM: He was a railroad -- he
16 worked in railroad.

17 DON VOGEL: Oh, okay.

18 KAREN GRISSOM: Railroad.

19 DON VOGEL: Okay.

20 KAREN GRISSOM: And, um -- and I remember her
21 mother. I don't remember her mother's name.

22 DON VOGEL: Okay.

23 KAREN GRISSOM: I remember her stepmother was
24 my piano teacher in college.

25 DON VOGEL: Okay.

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1 KAREN GRISSOM: But she was murdered. I
2 don't know if they ever found out who did it.

3 DON VOGEL: What city was she murdered in.

4 KAREN GRISSOM: In Yuma.

5 DON VOGEL: Okay. Now, are you from Yuma.

6 KAREN GRISSOM: Yes.

7 DON VOGEL: What year did you -- were you
8 born in Yuma.

9 KAREN GRISSOM: No.

10 DON VOGEL: Did -- when did you live there.

11 KAREN GRISSOM: Um, since I was about
12 six years old.

13 DON VOGEL: Until when.

14 KAREN GRISSOM: 1970 we moved away.

15 DON VOGEL: So you lived there for quite some
16 time.

17 KAREN GRISSOM: Yes.

18 DON VOGEL: So what year were you born.

19 KAREN GRISSOM: '49.

20 DON VOGEL: So you lived there from, like,
21 194- -- excuse me, 1955 until '77 -- until 70.

22 KAREN GRISSOM: Somewhere around there.

23 DON VOGEL: Okay. So you lived there for
24 quite some time. Um, so she ident- -- she told you her
25 name was Sheri Snow, and then you were kind of puzzled.

Karen Grissom - 10/26/2013

1 And what was her maiden name, again.

2 KAREN GRISSOM: Smoch.

3 DON VOGEL: Do you know how to spell that.

4 KAREN GRISSOM: S-m-o-c-h or k.

5 DON VOGEL: Okay. Had you known her growing
6 up.

7 KAREN GRISSOM: Growing up, yes. We just
8 lived a few blocks away from her.

9 DON VOGEL: Were you friends, or did you just
10 kind of know each other.

11 KAREN GRISSOM: We were friends. I would go
12 over to her mother -- to her house and -- and we would
13 play.

14 DON VOGEL: Okay.

15 KAREN GRISSOM: We were a different age.

16 DON VOGEL: Okay. So after she introduced
17 herself and kind of figured out who everybody was, what
18 happened.

19 KAREN GRISSOM: Um, she -- and then I said,
20 well, what do you do? She said, well, I used to be a
21 teacher. I was a teacher. I went to BYU, she said.
22 And I think that is where she said she met her husband,
23 and he is a federal judge.

24 DON VOGEL: Okay.

25 KAREN GRISSOM: Snow.

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1 DON VOGEL: Did she say his first name.

2 KAREN GRISSOM: I don't think so.

3 DON VOGEL: Okay. Did you know he was a
4 federal judge before that, or did she --

5 KAREN GRISSOM: No.

6 DON VOGEL: -- offer that to you.

7 KAREN GRISSOM: No. She brought that up.

8 DON VOGEL: Okay. What happened next.

9 KAREN GRISSOM: And, ah -- and, oh -- and I
10 said, oh, he is the one that is after Joe, the sheriff.
11 Oh, yes, he is.

12 DON VOGEL: Now, you said, "after Joe, the
13 sheriff." What did you mean by that.

14 KAREN GRISSOM: Um, what I meant is, he is
15 the judge on the -- on the -- on the case that --

16 DON VOGEL: Okay.

17 KAREN GRISSOM: -- that he had a lawsuit.

18 DON VOGEL: Okay.

19 KAREN GRISSOM: I've seen it on T- -- on --
20 on the news. That is all I knew.

21 DON VOGEL: Okay. Now, did you remember
22 if -- if she said he is the one after Joe, or he is the
23 one that is on the case involving Joe, or don't you
24 remember.

25 KAREN GRISSOM: I think it was probably

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1 after.

2 DON VOGEL: Okay.

3 KAREN GRISSOM: Not that...

4 DON VOGEL: Okay. Um, now, were you
5 following that case in the news, or was it just
6 something that you would see from --

7 KAREN GRISSOM: It is just --

8 DON VOGEL: -- time to time.

9 KAREN GRISSOM: -- I had seen on the news.

10 DON VOGEL: Okay. So it wasn't something you
11 watched for on --

12 KAREN GRISSOM: Because I like --

13 DON VOGEL: -- the news every night.

14 KAREN GRISSOM: -- Joe, and I don't -- I
15 didn't like the way he, you know, has been treated, you
16 know.

17 DON VOGEL: Okay.

18 KAREN GRISSOM: And, ah -- and then she
19 started, yeah, my husband, um, doesn't like him. He
20 wants him out of the -- out of his office. And he --
21 anything he can do to get him out of the office.

22 DON VOGEL: Okay. Um, how did you respond to
23 that.

24 KAREN GRISSOM: I didn't respond to anything
25 to it, because I didn't want to voice my opinion about

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-

10/26/2013

1 it.

2 DON VOGEL: Okay. Now, do you think your
3 husband heard that comment that you made.

4 KAREN GRISSOM: Yes, he did.

5 DON VOGEL: Did your son hear it.

6 KAREN GRISSOM: I don't know.

7 DON VOGEL: Okay.

8 KAREN GRISSOM: I didn't -- I haven't never
9 talked to him --

10 DON VOGEL: Okay.

11 KAREN GRISSOM: -- about it.

12 DON VOGEL: Was there any reason that your
13 son wouldn't have heard it? Was he on the phone? Was
14 he talking to somebody else?

15 KAREN GRISSOM: Um, probably -- he probably
16 would have heard it if --

17 DON VOGEL: Okay. So he was there and
18 present for the conversation.

19 KAREN GRISSOM: Yes.

20 DON VOGEL: Okay. Um.

21 KAREN GRISSOM: At the time, I think he was
22 living with us.

23 DON VOGEL: Okay. Do you remember why he was
24 living with you.

25 KAREN GRISSOM: His wife kicked him out.

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1 DON VOGEL: Okay. So is he back together.

2 KAREN GRISSOM: No.

3 DON VOGEL: Didn't work out.

4 KAREN GRISSOM: No.

5 DON VOGEL: I'm sorry.

6 KAREN GRISSOM: They are divorced now.

7 DON VOGEL: Okay. Um, what does your son do
8 in Oxnard.

9 KAREN GRISSOM: He, ah, worked for a company.
10 He is a project manager. They -- he is over the crew
11 that takes care of the streets down by the ocean from
12 the streets on the --

13 DON VOGEL: Okay. So he works for the city.

14 KAREN GRISSOM: No. It is a contract job.

15 DON VOGEL: Okay.

16 KAREN GRISSOM: Because I don't know the
17 company.

18 DON VOGEL: Okay. Um, so she said that --
19 that her husband wanted Joe out of office.

20 KAREN GRISSOM: M'hum.

21 DON VOGEL: What happened next.

22 KAREN GRISSOM: Oh, we just talked, and she
23 talked about her daughter going to -- leaving for BYU
24 when school starts. And that is pretty much the
25 conversation.

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1 DON VOGEL: Was anybody with her.

2 KAREN GRISSOM: She had one of her -- one of
3 her daughters with her.

4 DON VOGEL: Do you remember which one.

5 KAREN GRISSOM: No.

6 DON VOGEL: Can you describe her for me?

7 KAREN GRISSOM: Kind of sandy blonde hair.

8 DON VOGEL: How old.

9 KAREN GRISSOM: Oh, in her 20s, maybe not
10 even that.

11 DON VOGEL: Okay.

12 KAREN GRISSOM: Probably just out of high
13 school or that.

14 DON VOGEL: Okay. Can you describe Sheri for
15 me?

16 KAREN GRISSOM: She had short hair.

17 DON VOGEL: Okay. Is she -- is she white,
18 Hispanic?

19 KAREN GRISSOM: She is white.

20 DON VOGEL: Okay. So she is a white female.

21 KAREN GRISSOM: M'hum.

22 DON VOGEL: About how old.

23 KAREN GRISSOM: She is probably about 55, 56.

24 DON VOGEL: Okay. About how tall.

25 KAREN GRISSOM: Oh, she is probably about 5'

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1 9", 5' 10".

2 DON VOGEL: And is she heavy? Is she thin.

3 KAREN GRISSOM: She is -- she is thin.

4 DON VOGEL: Okay. And what color hair.

5 KAREN GRISSOM: It looked like a -- it wasn't
6 quite blonde, but it was -- it had blonde streaks in it.
7 Sandy blonde or --

8 DON VOGEL: Was the rest of it lighter, the
9 part that didn't have blonde streaks.

10 KAREN GRISSOM: Yeah, it was darker.

11 DON VOGEL: What color would you say the --
12 if you had to tell me what color hair she had, what
13 color hair did she have.

14 KAREN GRISSOM: Ah, light brown.

15 DON VOGEL: Okay. Um, and did she have any
16 distinguishing characteristics about her.

17 KAREN GRISSOM: No.

18 DON VOGEL: Okay. Do you remember what color
19 shirt she was wearing.

20 KAREN GRISSOM: No.

21 DON VOGEL: Um.

22 KAREN GRISSOM: She had a white dog with her.

23 DON VOGEL: She had a -- what kind of dog.

24 KAREN GRISSOM: Um, probably a, I don't know,
25 a lab short -- real short hair.

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1 DON VOGEL: Big dog or little dog.

2 KAREN GRISSOM: It was a big dog. They had
3 it outside.

4 DON VOGEL: Okay. Was anybody outside
5 watching the dog.

6 KAREN GRISSOM: Another daughter, I believe.

7 DON VOGEL: Okay.

8 KAREN GRISSOM: Or it was -- you know, I
9 think another daughter was outside.

10 DON VOGEL: Okay. And the daughter that was
11 in was also a white female.

12 KAREN GRISSOM: Yes.

13 DON VOGEL: And she was how old, did you say?

14 KAREN GRISSOM: Oh, probably in her 20s. I
15 don't --

16 DON VOGEL: Mid, early, late?

17 KAREN GRISSOM: Mid 20s, early 20s.

18 DON VOGEL: Do you remember what color hair.

19 KAREN GRISSOM: She had -- I think she had
20 long hair. It is was blonde.

21 DON VOGEL: Okay. Any -- um, about how tall?

22 KAREN GRISSOM: About same tall -- height as
23 her mother.

24 DON VOGEL: And was she thin, heavy --

25 KAREN GRISSOM: Thin.

Karen Grissom - 10/26/2013

1 DON VOGEL: Okay. Do you remember what
2 color -- what clothing she had on.

3 KAREN GRISSOM: No.

4 DON VOGEL: Did she say anything in the
5 conversation.

6 KAREN GRISSOM: No, I don't think so.

7 DON VOGEL: Was she close enough to the table
8 to hear what was going on.

9 KAREN GRISSOM: She was, ah, kind of back.
10 She probably would have --

11 DON VOGEL: Okay.

12 KAREN GRISSOM: -- was there.

13 DON VOGEL: Would it surprise you if, with
14 the activity in the restaurant, based on her position,
15 if we asked her if she heard this comment, would you
16 expect her to be able to have heard it, or would you be
17 surprised if she said she didn't hear it.

18 KAREN GRISSOM: I would be surprised if he
19 didn't hear it.

20 DON VOGEL: Okay. Did -- when she said that
21 comment was there a lot of emotion behind it? Was she
22 making any faces or anything.

23 KAREN GRISSOM: No, uh-uh. Just like that
24 was just her -- she just was, ah, talking with us, you
25 know, about him and --

Karen Grissom

-

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1 DON VOGEL: Kind of matter of factly.

2 KAREN GRISSOM: Kind of bragging about her
3 husband.

4 DON VOGEL: Bragging about her husband.

5 KAREN GRISSOM: Yes.

6 DON VOGEL: Okay.

7 KAREN GRISSOM: That he was a judge.

8 DON VOGEL: Okay. Um, would you have any
9 problems responding to a subpoena if you were issued a
10 subpoena to talk about this.

11 KAREN GRISSOM: No.

12 DON VOGEL: Okay. Um, and something I want
13 to ask you, and, obviously, you know this is being
14 taped. It is very important, um, I certainly would
15 never ask you to keep any secrets from your husband, but
16 I -- but I would like you to not tell him about the
17 content of what we talked about. Certainly, you are
18 going to tell him I was here.

19 KAREN GRISSOM: Yes.

20 DON VOGEL: Certainly, you are going to tell
21 him it was about this situation in the restaurant. But
22 if you could not go into specifics about what we talked
23 about, I think that would be best.

24 KAREN GRISSOM: Yeah.

25 DON VOGEL: And then, um, as well with your

Karen Grissom - 10/26/2013

1 son. Maybe not even contact your son about this. Let
2 us contact him.

3 KAREN GRISSOM: I haven't done anything, even
4 my sister.

5 DON VOGEL: Okay. Um, that is my next
6 question. Who else have you told about this.

7 KAREN GRISSOM: Just -- just between my
8 husband and I. That is all.

9 DON VOGEL: Now, did you make an entry on a
10 Facebook page about this.

11 KAREN GRISSOM: Yes.

12 DON VOGEL: Okay. When did you do that.

13 KAREN GRISSOM: Oh, it was just --

14 DON VOGEL: How long after the incident.

15 KAREN GRISSOM: It has been a while.

16 DON VOGEL: Why did -- what prompted you to
17 make the entry into the Facebook page.

18 KAREN GRISSOM: It was after, ah, some ruling
19 that -- in court about something being dismissed and
20 not -- had to do with immigration. It was -- I don't
21 remember. But it just bothered me all the time that
22 when -- after she had said that and then knowing that he
23 was the federal judge on the case. And for her to say
24 that, because she wouldn't be saying that unless her
25 husband was talking about it.

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1 DON VOGEL: Okay.

2 KAREN GRISSOM: And things like that, we were
3 always brought up to, if there is a problem, you tell
4 the truth, and, you know, you tell somebody.

5 DON VOGEL: Okay. So when you made that
6 Facebook entry, it was as a result --

7 KAREN GRISSOM: It was of concern. It was a
8 big concern.

9 DON VOGEL: Because of you were following
10 some different rulings by the Court from -- did you ever
11 go down to court and watch it --

12 KAREN GRISSOM: No.

13 DON VOGEL: -- or did you just see it on TV.

14 KAREN GRISSOM: No, just news.

15 DON VOGEL: So you saw it on TV, and then
16 because of the particular ruling that was -- I'm
17 assuming was that adverse to Sheriff Arpaio?

18 KAREN GRISSOM: M'hum. I messaged him
19 personally on because -- Facebook, because I didn't want
20 it to be publicized.

21 DON VOGEL: Okay. So that entry was to him
22 as a personal message.

23 KAREN GRISSOM: Yes.

24 DON VOGEL: It wasn't out for the world to
25 see.

Karen Grissom - 10/26/2013

1 KAREN GRISSOM: No. No, it wasn't.
2 DON VOGEL: Have you been contacted by
3 anybody at all prior to me.
4 KAREN GRISSOM: No.
5 DON VOGEL: Okay. Mr. Casey spoke with
6 you --
7 KAREN GRISSOM: Yes --
8 DON VOGEL: -- by telephone about --
9 KAREN GRISSOM: -- Mr. Casey.
10 DON VOGEL: -- this. Any -- anyone other
11 than myself or Mr. Casey --
12 KAREN GRISSOM: No.
13 DON VOGEL: -- speak with you.
14 If I -- okay. Have you made any other
15 special messages to Sheriff Arpaio?
16 KAREN GRISSOM: No.
17 DON VOGEL: Okay. Have you made any phone
18 calls to him.
19 KAREN GRISSOM: No.
20 DON VOGEL: Have you ever met him.
21 KAREN GRISSOM: No.
22 DON VOGEL: Do you have any relationship with
23 him at all.
24 KAREN GRISSOM: No.
25 DON VOGEL: Does your husband or your son

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1 have any relationship with him.

2 KAREN GRISSOM: No.

3 DON VOGEL: Is there any reason that you
4 would be making a false statement about this.

5 KAREN GRISSOM: No.

6 DON VOGEL: Have you ever been in trouble.

7 KAREN GRISSOM: No.

8 DON VOGEL: Have you ever been arrested.

9 KAREN GRISSOM: No.

10 DON VOGEL: No criminal convictions.

11 KAREN GRISSOM: No.

12 DON VOGEL: How about your husband or your
13 son.

14 KAREN GRISSOM: No.

15 DON VOGEL: Okay. Before I leave, could I
16 get a cell phone number from your son.

17 KAREN GRISSOM: Um, my phone is not working
18 right now.

19 DON VOGEL: No -- oh, so you can't get it off
20 your phone?

21 KAREN GRISSOM: It has something to do with
22 iCloud and passwords. It is an Apple phone. I don't
23 know, it is --

24 DON VOGEL: If you want, I've been through
25 that within the last few days.

Exhibit 17

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
Civil Action No. 07-2513-PHX-GMS
Judge G. Murray Snow

Manuel de Jesus Ortega
Melendres, et al.,

Plaintiffs,

v.

Joseph M. Arpaio, et al.,
Defendants.

CV 07-2513-PHX-GMS

The Hon. G. Murray Snow,
Judge Presiding.

DECLARATION OF RONALD D. ROTUNDA

I, RONALD D. ROTUNDA, declare as follows:

I. INTRODUCTION

1. My name is Ronald D. Rotunda. I am currently the Doy & Dee Henley Chair and Distinguished Professor of Jurisprudence at Chapman University School of Law in Orange, California, where I teach courses in Legal Ethics and Constitutional Law. Attached, as Exhibit A is a copy of my current resume.
2. Except where otherwise noted, I make this declaration based on my personal knowledge and if called upon as a witness, I could and would testify competently to its contents.

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II. QUALIFICATIONS

3. Before I joined Chapman U. in August 2008, I was the George Mason University Foundation Professor of Law from August 2002 (when I started teaching at George Mason University School of Law), until August 2006, when I became University Professor and Professor of Law at George Mason University School of Law. Please see my resume, Exhibit 1, for more information, including a list of my publications.
4. Prior to that (from 1993 until 2002), I was the Albert E. Jenner, Jr. Professor of Law at the University of Illinois. I left the University of Illinois in 2002, and then began working full-time at George Mason University.
5. I am a magna cum laude graduate of Harvard Law School, where I served as a member of the Harvard Law Review. I later clerked for Judge Walter R. Mansfield of the United States Court of Appeals for the Second Circuit. During the course of my legal career, I have practiced law in Illinois, New York, Washington, D.C., and served as assistant majority counsel for the Senate Watergate Committee.
6. I am the co-author of PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Westbury, N.Y., 12th ed. 2014), the most widely used legal ethics course book in the United States. It has been the most widely used since I coauthored the first edition in 1976. In addition, I have authored or coauthored several other books on legal ethics, including ROTUNDA & DZIENKOWSKI, LEGAL ETHICS: THE LAWYER'S DESKBOOK ON PROFESSIONAL RESPONSIBILITY (ABA/Thompson, 2014).
7. In addition to these books, I have written numerous articles on legal ethics, as well as several books and articles on Constitutional Law, as indicated in the attached resume. State and federal courts at every level have cited my treatises and articles over 1000

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times. From 1980 to 1987, I was a member of the Multistate Professional Examination Committee of the National Conference of Bar Examiners.

8. In 2000, the University of Chicago Press published a lengthy study that sought to determine the influence, productivity, and reputations of law professors over the last several decades. That study ranked me as the 17th highest in the nation. *See Interpreting Legal Citations*, 29 JOURNAL OF LEGAL STUDIES (part 2) (U. Chicago Press, Jan. 2000).
9. The 2002-2003 New Educational Quality Ranking of U.S. Law Schools (EQR) ranked me the 11th most cited of all law faculty in the United States. *See* http://www.leiterrankings.com/faculty/2002faculty_impact_cites.shtml . I was selected the Best Lawyer in Washington, DC, in 2009 in Ethics and Professional Responsibility Law, as published in the November 2008 in the Washington Post in association with the Legal Times. I was also selected as one of the Best Lawyers in Southern California, in 2010 in Ethics and Professional Responsibility Law, and yet again in 2011, 2012, 2013, 2014, as published in the Los Angeles Times, in association with American Law Media.
10. I am a member of the bars of New York, Illinois, Washington, D.C., the Second Circuit, Seventh Circuit, the D.C. Circuit, the Fourth Circuit, the Central District of Illinois, D.C. District Court, and the U.S. Supreme Court.
11. Over the years, I have spoken at various ABA conferences on legal ethics and was a featured speaker on an ABA videotape series on legal ethics. I am a former —
 - Member of the Bar Admissions Committee of the Association of American Law Schools;
 - Chair of the Section on Professional Responsibility of the Association of American Law Schools;
 - Member of the ABA Standing Committee on Professional Discipline (1991-1997);

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- Chair of the ABA Subcommittee on Model Rules Review (1992-1997); member of the Consultant Group of the American Law Institute's Restatement of the Law Governing Lawyers.
 - Member of the Advisory Council to Ethics 2000, the ABA Commission that proposed revisions to the ABA Model Rules of Professional Conduct (1998-2000).
 - Liaison to the ABA Standing Committee on Ethics and Professional Responsibility (1994-1997).
12. Since 1994, I have been a member of the Publications Board of the A.B.A. Center for Professional Responsibility. I am a Life Fellow of the American Bar Foundation and the Illinois Bar Foundation, and a former consultant to the Administrative Conference of the United States on various issues relating to legal ethics.
13. During May 1996, I was the Consultant to the Chamber of Advocates of the Czech Republic: under the auspices of the United States Agency for International Development, I spent the month of May 1996, in Prague, drafting Rules of Professional Responsibility for lawyers in the Czech Republic. I also wrote the original draft of the first Czech Bar Examination on Professional Responsibility, and consulted with the Czech Supreme Court in connection with the Court's proposed Rules of Judicial Ethics and the efforts of that Court to create an independent judiciary.
14. During November-December, 2002, I was Visiting Scholar, Katholieke Universiteit Leuven, Faculty of Law in, Leuven, Belgium.
15. In May 2004, and December 2005, I was visiting lecturer at the Institute of Law and Economics, Institut für Recht und Ökonomik, at the University of Hamburg.
16. During July 2007, I was in Latvia where I conferred with various judges from the Baltic States on judicial ethics, under the auspices of the U.S. Embassy, the Supreme Court of Latvia, and the Latvian Ministry of Justice. A copy of my curriculum vitae is attached.

III. DOCUMENTS

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17. I have reviewed the followings documents in connection with this matter. It appears that the judge is getting most of his “information” from articles of the Phoenix New Times:

- a. http://blogs.phoenixnewtimes.com/valleyfever/2015/04/judge_murray_snow_joe_arpaiο_contempt_trial.php
- b. http://blogs.phoenixnewtimes.com/valleyfever/2015/04/arpaiο_cops_to_investigating_federal_judge_judges_wife_confirming_new_times.php (“judge’s spouse allegedly made at a restaurant, to the effect that Judge Snow wanted to ‘make sure’ Arpaiο’s not re-elected”)
- c. http://blogs.phoenixnewtimes.com/valleyfever/2015/04/arpaiοs_chief_deputy_confirms_wack_investigations_of_judges_wife_cia_doj_et.php (“I know Judge Snow’s wife, she told me he hates you and wants to see you out of office.”)
- d. Order re evidentiary hearing of 4/27/2015; MEO re Day 4 evidentiary hearing
- e. Transcripts of Evidentiary Hearing of 4/21/2015; 4/22/2015; 4/23/2015; 4/24/2015

IV. SUMMARY OF THE FACTS

18. On April 22, 2015, and on April 23, 2015, Judge Snow conducted a cross examination of Sheriff Arpaiο. Judge Snow quickly learned that Sheriff Arpaiο was not investigating the judge (Evidentiary Hearing, 4/23/2015, p. 648, l. 14.) Instead, the judge was interested in learning all he could about an email that Sheriff Arpaiο received from “someone named Grissom,” who met the judge’s wife in a restaurant.” (Evidentiary Hearing, 4/23/2015, p. 654-55.). Mr. Grisson heard the judge’s wife say that “Judge Snow wanted to do everything to make sure I’m [Sheriff Arpaiο] not elected.” (Evidentiary Hearing, 4/23/2015, p. 655, ll. 19-20.)

19. Sheriff Arpaiο wanted to confirm that Mr. Grisson’s statement was actually true. The judge then asked Sheriff Arpaiο various leading questions (indicating that the judge was cross-examining the witness). Q is Judge; A. is Sheriff

- Q. Okay. And so you turned that over to your counsel and counsel hired a private investigator, and what did the investigator do?
- A. He investigated it.

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- Q. And what was the result of the investigation?
- A. Results were that *he confirmed that your wife was in that restaurant* and con -- I guess *talked to the witnesses, three or four, that confirm that remark was made.* [Evidentiary Hearing, 4/23/2015, p. 655, ll. 5-12 (emphasis added)]

20. The *judge apparently engaged in his own investigation of facts outside the courtroom* he thought relevant that were not in evidence. (Evidentiary Hearing, 4/23/2015, at p. 657, l. 25 & p. 658, ll. 1-2.) The judge said, “*I was told* [during the luncheon break] that you also have various sources of funding within the MSCO,” and Sheriff Arpaio responded that the judge’s information was false. [Emphasis added.] The judge did not say who told him this false information, nor does he say if he questioned others as well.
21. Later, the *judge* said, “Well, so he found information that the DOJ [Department of Justice] had sent a communication to my computer?” Evidentiary Hearing of 4/24/2015, at p. 1000, ll. 19-20. Note that this is a leading question, to which the witness (Sheridan) responds, “Something to that effect, yes.”
22. Shortly thereafter, Mr. Sheridan said that he did not think the evidence of this email showed “collusion,” to which the judge promptly replied, “Well, I certainly agree with that” Evidentiary Hearing of 4/24/2015, at p. 1002, l.3.
23. The judge appears to be taking evidence outside of court (See ¶ 20), asking leading questions (e.g. ¶ 21), and giving his own testimony (¶ 22).
24. The judge also becomes argumentative. He tells Mr. Sheridan that he did not have to hire Mr. Montgomery as a “confidential” consultant — “Well, but what was he doing that needed to be confidential for?” The witness tries to answer, but the judge *interrupted* the witness, preventing him from finishing his sentence. Then the judge argues that there

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was no need for confidentiality because the consultant was not a mole infiltrating organized crime. The witness responds that the investigation was confidential because it concerns the CIA breaching personal information at least 50,000 American citizens, including “citizens that lived here in Maricopa County.” However, the judge became more argumentative, telling the witness, “I still don’t understand” why such a witness should be called “confidential,” even though the witness informed the judge that this informant qualified as “confidential” under the *written* rules of the operations manual. Evidentiary Hearing of 4/24/2015, at pp. 1005-0116.

25. I am told that Judge Snow is now ordering that documents showing communications with or referring to Larry Klayman, the lawyer for Mr. Montgomery, be turned over to him, including documents covered at least by the Attorney Work Product Privilege.

- a. Mr. Klayman and Mr. Montgomery are not parties to this case;
- b. No party has issued subpoenas for any of these documents;
- c. I am advised that the documents are confidential and within the Attorney Client and/or Work Product Privileges.

26. In the judge’s order of April 27, he states that he ordered the “MCSO defendants to *immediately disclose* certain materials discussed in the Court’s colloquy Sheriff Arpaio.” [Emphasis added.] The judge states, “Attorney review for privilege was conducted contemporaneously with this production” I have been advised that this is not true.

V. CONCLUSION

27. We know that several people report that the judge’s wife said that her husband, Judge Snow, “Judge Snow wanted to do everything to make sure [that Sheriff Arpaio is] not elected.” It should be quite obvious that whatever the duties of a federal judge are, that job description does not include conducting a judicial proceeding in a way to insure that

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Sheriff Arpaio is not elected and to pursue an investigation that is even broader than that for what appears to be personal reasons.

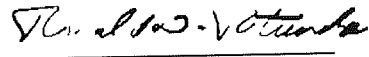
28. Moreover, we also know that in the several days of hearing, the judge —

- a. asked leading questions,
- b. gave his own version of the facts,
- c. conducted his own investigation outside the courtroom,
- d. argued with witnesses, and
- e. was extremely interested in what evidence existed concerning the statement he made to his wife that he would do all that he could to make sure that Sheriff Arpaio is not elected.

29. Under these set of facts, the judge should be disqualified because of his personal bias or prejudice against a party, Sheriff Arpaio. See 28 U.S.C. §144. This section has no provision for any waiver.

30. The judge should also be disqualified pursuant to 28 U.S.C. §455(b)(1) (“personal bias or prejudice concerning a party” *or* “personal knowledge of disputed evidentiary facts concerning the proceeding.” Section 455(e) allows for waiver of some disqualifications but does not allow any waiver for any disqualification under §455(b). 28 U.S.C 144 is also implicated here.

31. I declare under penalty of perjury that the foregoing is true and correct and that I signed this declaration on 6 May 2015, in Orange, California.


RONALD D. ROTUNDA

Attachment A

RONALD D. ROTUNDA
Email: rrotunda@chapman.edu

April 27, 2015
Home Page  <http://www1.chapman.edu/~rrotunda>

Office Address:

Chapman University
Dale E. Fowler School of Law
Room 406
One University Drive
Orange, CA 92866-1005
☎: (714) 628-2698
Fax: (714) 628-2576

Experience:

Since August, 2008	DOY & DEE HENLEY CHAIR AND DISTINGUISHED PROFESSOR OF JURISPRUDENCE, CHAPMAN UNIVERSITY
June 17, 2009 – Jan. 31, 2013	COMMISSIONER, Fair Political Practices Commission a regulatory body of the State of California,
2006- August 2008	UNIVERSITY PROFESSOR AND PROFESSOR OF LAW, George Mason University
2002-2006	THE GEORGE MASON UNIVERSITY FOUNDATION PROFESSOR OF LAW, George Mason University School of Law
Nov. to Dec. 2002	Visiting Scholar, Katholieke Universiteit Leuven, Faculty of Law, Leuven, Belgium
May 2004	Visiting Lecturer, The Institute for Law and Economics, Institut für Recht und Ökonomik, The University of Hamburg, Germany
June 2004-May 2005	Special Counsel to Department of Defense, The Pentagon
December 2005	Visiting Lecturer, The Institute for Law and Economics, Institut für Recht und Ökonomik, The University of Hamburg, Germany
1993 - 2002	THE ALBERT E. JENNER, JR. PROFESSOR OF LAW, University of Illinois College of Law
Since 2002	THE ALBERT E. JENNER, JR. PROFESSOR OF LAW, EMERITUS, University of Illinois College of Law
Fall, 2001	Visiting Professor, George Mason University School of Law

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Ronald D. Rotunda

Spring & Fall 2000	Cato Institute, Washington, D.C.; Senior Fellow in Constitutional Studies [Senior Fellow in Constitutional Studies, 2001-2009]
Spring, 1999	Visiting Professor, holding the JOHN S. STONE ENDOWED CHAIR OF LAW, University of Alabama School of Law
August 1980 - 1992	Professor of Law, University of Illinois College of Law
March 1986	Fulbright Professor, Maracaibo and Caracas, Venezuela, under the auspices of the Embassy of the United States and the Catholic University Andres Bello
January – June, 1981	Fulbright Research Scholar, Italy
Spring 1981	Visiting Professor of Law, European University Institute, Florence, Italy
August 1977 – August, 1980	Associate Professor of Law, University of Illinois College of Law
August 1974 – August 1977	Assistant Professor of Law, University of Illinois College of Law
April 1973 - July 1974	Assistant Counsel, U.S. Senate Select Committee on Presidential Campaign Activities
July 1971 - April, 1973	Associate, Wilmer, Cutler & Pickering Washington, DC
August 1970 – July 1971	Law Clerk to Judge Walter R. Mansfield, Second Circuit, New York, N.Y.

Education:

Legal: HARVARD LAW SCHOOL (1967- 1970)
Harvard Law Review, volumes 82 & 83
J.D., 1970 Magna Cum Laude

College: HARVARD COLLEGE (1963- 1967)
A.B., 1967 Magna Cum Laude in Government

Member:

American Law Institute (since 1977); Life Fellow of the American Bar Foundation (since 1989); Life Fellow of the Illinois Bar Foundation (since 1991); The Board of Editors, The Corporation Law Review (1978-1985); New York Bar (since 1971); Washington, D.C. Bar and D.C. District Court Bar (since 1971); Illinois Bar (since 1975); 2nd Circuit Bar (since 1971); Central District of Illinois (since 1990); 7th Circuit (since 1990); U.S. Supreme Court Bar (since 1974); 4th Circuit, since 2009. Member: American Bar Association, Washington, D.C. Bar Association, Illinois State Bar

Association, Seventh Circuit Bar Association; The Multistate Professional Responsibility Examination Committee of the National Conference of Bar Examiners (1980-1987); AALS, Section on Professional Responsibility, Chairman Elect (1984-85), Chairman (1985-86); Who's Who In America (since 44th Ed.) and various other Who's Who; American Lawyer Media, L.P., National Board of Contributors (1990-2000). Best teacher selected by George Mason U. Law School Graduating Class of 2003.

Scholarly Influence and Honors:

Symposium, *Interpreting Legal Citations*, 29 JOURNAL OF LEGAL STUDIES (part 2) (U. Chicago Press, Jan. 2000), sought to determine the influence, productivity, and reputation of law professors. Under various measures, Professor Rotunda scored among the highest in the nation. *E.g.*, scholarly impact, most-cited law faculty in the United States, 17th (p. 470); reputation of judges, legal scholars, etc. on Internet, 34th (p. 331); scholar's non-scholarly reputation, 27th (p. 334); most influential legal treatises since 1978, 7th (p. 405).

In May 2000, *American Law Media*, publisher of *The American Lawyer*, the *National Law Journal*, and the *Legal Times*, picked Professor Rotunda as one of the ten most influential Illinois Lawyers. He was the only academic on the list. He was rated, in 2014, as one of "The 30 Most Influential Constitutional Law Professors" in the United States.

- 2012, Honored with, THE CHAPMAN UNIVERSITY EXCELLENCE IN SCHOLARLY/CREATIVE WORK AWARD, 2011-2012.
- Appointed UNIVERSITY PROFESSOR, 2006, George Mason University; Appointed 2008, DOY & DEE HENLEY CHAIR AND DISTINGUISHED PROFESSOR OF JURISPRUDENCE, Chapman University.
- The 2002-2003 *New Educational Quality Ranking* of U.S. Law Schools (EQR) ranks Professor Rotunda as the eleventh most cited of all law faculty in the United States. See http://www.leiterrankings.com/faculty/2002faculty_impact_cites.shtml
- Selected UNIVERSITY SCHOLAR for 1996-1999, University of Illinois.
- 1989, Ross and Helen Workman Research Award.
- 1984, David C. Baum Memorial Research Award.
- 1984, National Institute for Dispute Resolution Award.
- Fall, 1980, appointed Associate, in the Center for Advanced Study, University of Illinois.

LIST OF PUBLICATIONS:

BOOKS:

PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1976) (with Thomas D. Morgan).

CALIFORNIA SUPPLEMENT TO PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1976) (with Thomas D. Morgan).

1978 SUPPLEMENT TO PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1978) (with Thomas D. Morgan).

1979 PROBLEMS, CASES AND READINGS SUPPLEMENT TO PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1979) (with Thomas D. Morgan).

1979 CALIFORNIA RULES SUPPLEMENT TO PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1979) (with Thomas D. Morgan).

1979 STANDARDS SUPPLEMENT TO PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1979) (with Thomas D. Morgan).

1980 CALIFORNIA RULES SUPPLEMENT TO PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1980) (with Thomas D. Morgan).

1980 STANDARDS SUPPLEMENT TO PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 1980) (with Thomas D. Morgan).

CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 1978) (a one volume treatise on Constitutional Law) (with John E. Nowak and J. Nelson Young).

1978 SUPPLEMENT TO CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 1978) (with John E. Nowak and J. Nelson Young).

1979-1980 SUPPLEMENT TO CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 1979) (with John E. Nowak and J. Nelson Young).

1982 SUPPLEMENT TO CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 1982) (with John E. Nowak and J. Nelson Young).

MODERN CONSTITUTIONAL LAW: CASES & NOTES (West Publishing Co., St. Paul, Minnesota, 1981).

1981 SUPPLEMENT TO MODERN CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 1981).

1982 SUPPLEMENT TO MODERN CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 1982).

1983 SUPPLEMENT TO MODERN CONSTITUTIONAL LAW (West Publishing Co., St. Paul, Minnesota, 1983).

1984 SUPPLEMENT TO MODERN CONSTITUTIONAL LAW (West Publishing Co., St. Paul, MINNESOTA, 1984).

PROBLEMS AND MATERIALS ON PROFESSIONAL RESPONSIBILITY (Foundation Press, Mineola, N.Y., 2d ed. 1981) (with Thomas D. Morgan).

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Other Activities:

March-April, 1984, Expert Witness for State of Nebraska on Legal Ethics at the Impeachment Trial of Nebraska Attorney General Paul L. Douglas (tried before the State Supreme Court; the first impeachment trial in nearly a century).

July 1985, Assistant Chief Counsel, State of Alaska, Senate Impeachment Inquiry of Governor William Sheffield, (presented before the Alaskan Senate).

Speaker at various ABA sponsored conferences on Legal Ethics; Speaker at AALS workshop on Legal Ethics; Speaker on ABA videotape series, "Dilemmas in Legal Ethics."

Interviewed at various times on Radio and Television shows, such as MacNeil/Lehrer News Hour, Firing Line, CNN News, CNN Burden of Proof, ABC's Nightline, National Public Radio, News Hour with Jim Lehrer, Fox News, etc.

1985--1986, Reporter for Illinois Judicial Conference, Committee on Judicial Ethics.

1981-1986, Radio commentator (weekly comments on legal issues in the news), WILL-AM Public Radio.

1986-87, Reporter of Illinois State Bar Association Committee on Professionalism.

1987-2000, Member of Consultant Group of American Law Institute's RESTATEMENT OF THE LAW GOVERNING LAWYERS.

1986-1994, Consultant, Administrative Conference of the United States (on various issues relating to conflicts of interest and legal ethics).

1989-1992, Member, Bar Admissions Committee of the Association of American Law Schools.

1990-1991, Member, Joint Illinois State Bar Association & Chicago Bar Association Committee on Professional Conduct.

1991-1997, Member, American Bar Association Standing Committee on Professional Discipline.

CHAIR, Subcommittee on Model Rules Review (1992-1997). [The subcommittee that I chaired drafted the MODEL RULES FOR LAWYER DISCIPLINARY ENFORCEMENT that the ABA House of Delegates approved on August 11, 1993.]

1992, Member, Illinois State Bar Association [ISBA] Special Committee on Professionalism; CHAIR, Subcommittee on Celebration of the Legal Profession.

Spring 1993, Constitutional Law Adviser, SUPREME NATIONAL COUNCIL OF CAMBODIA. I traveled to Cambodia and worked with officials of UNTAC (the United Nations

Transitional Authority in Cambodia) and Cambodian political leaders, who were charged with drafting a new Constitution to govern that nation after the United Nations troop withdrawal.

1994-1997, LIAISON, ABA Standing Committee on Ethics and Professional Responsibility.

1994-1996, Member, Illinois State Bar Association [ISBA] Standing Committee on the Attorney Registration and Disciplinary Commission.

Winter 1996, Constitutional Law Adviser, SUPREME CONSTITUTIONAL COURT OF MOLDOVA.

Under the auspices of the United States Agency for International Development, I consulted with the six-member Supreme Constitutional Court of Moldova in connection with that Court's efforts to create an independent judiciary. The Court came into existence on January 1, 1996.

Spring 1996, Consultant, CHAMBER OF ADVOCATES, of the CZECH REPUBLIC.

Under the auspices of the United States Agency for International Development, I spent the month of May 1996, in Prague, drafting Rules of Professional Responsibility for all lawyers in the Czech Republic. I also drafted the first Bar Examination on Professional Responsibility, and consulted with the Czech Supreme Court in connection with the Court's proposed Rules of Judicial Ethics and the efforts of the Court to create an independent judiciary.

Consulted with (and traveled to) various countries on constitutional and judicial issues (e.g., Romania, Moldova, Ukraine, Cambodia) in connection with their move to democracy.

1997-1999, Special Counsel, Office of Independent Counsel (Whitewater Investigation).

Lecturer on issues relating to Constitutional Law, Federalism, Nation-Building, and the Legal Profession, throughout the United States as well as Canada, Cambodia, Czech Republic, England, Italy, Mexico, Moldova, Romania, Scotland, Turkey, Ukraine, and Venezuela.

1998-2002, Member, ADVISORY COUNCIL TO ETHICS 2000, the ABA Commission considering revisions to the ABA Model Rules of Professional Conduct.

2000-2002, Member, ADVISORY BOARD TO THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS (This Board was charged with removing any remaining vestiges of organized crime to influence the Union, its officers, or its members.) This Board was part of "Project RISE" ("Respect, Integrity, Strength, Ethics").

2001-2008, Member, Editorial Board, CATO SUPREME COURT REVIEW.

2005-2006, Member of the Task Force on Judicial Functions of the Commission on Virginia Courts in the 21st Century: To Benefit All, to Exclude None

July, 2007, Riga, Latvia, International Judicial Conference hosted by the United States Embassy, the Supreme Court of Latvia, and the Latvian Ministry of Justice. I was one of the main speakers along with Justice Samuel Alito, the President of Latvia, the Prime Minister of Latvia, the Chief Justice of Latvia, and the Minister of Justice of Latvia

Since 1994, Member, Publications Board of the ABA Center for Professional Responsibility; vice chair, 1997-2001.

Since 1996, Member, Executive Committee of the Professional Responsibility, Legal Ethics & Legal Education Practice Group of the Federalist Society; Chair-elect, 1999; Chair, 2000

Since 2003, Member, Advisory Board, the Center for Judicial Process, an interdisciplinary research center (an interdisciplinary research center connected to Albany Law School studying courts and judges)

Since 2012, Distinguished International Research Fellow at the World Engagement Institute, a non-profit, multidisciplinary and academically-based non-governmental organization with the mission to facilitate professional global engagement for international development and poverty reduction, <http://www.weinstitute.org/fellows.html>

Since 2014, Associate Editor of the Editorial Board, THE INTERNATIONAL JOURNAL OF SUSTAINABLE HUMAN SECURITY (IJSHS), a peer-reviewed publication of the World Engagement Institute (WEI)

Since 2014, Member, Board of Directors of the Harvard Law School Association of Orange County

Since 2014, Member, Editorial Board of THE JOURNAL OF LEGAL EDUCATION (2014 to 2016).